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RECONSTRUCTION AGENCIES

F. H. NEWELL

University of Illinois

Reconstruction of things, of men, and especially of ideals was demanded as soon as the world awoke to the magnitude of the destruction being wrought by the great war. As time went on and more and more peoples were drawn in, with ever widening ruin to property and institutions, the need for devising far-reaching plans for rebuilding became more pressing. While every possible effort was being made to win the war quickly, yet at the same time certain far seeing men recognized that if peace came without having adequate plans for reconstruction much of the fruit of victory might be lost. Thus it was that many of the nations, even during the height of the war, created organizations whose duty it was to prepare plans and especially to conduct researches into those matters which, with the reëstablishment of peace, would have prime importance.[1]

Many a statesman of Europe and each propagandist the world over has seen the opportunity. He has had his vision of what may be accomplished at the golden moment in the world's history when so much that is old and bad has been weakened and

[1] "How Great Britain is Handling Post-war Questions," *Commerce Reports*, March 6, 1918, pp. 854–862; also *Taking Stock of the Future, Outline of the Plans of Various Foreign Countries for Commercial Reconstruction*, Guaranty Trust Company, New York, 162 pp., 1918.

so much that is idealistic may become real if only this opportunity is grasped. The towns of the war zone with their unsanitary surroundings, their narrow crooked streets, wrecked by war, may be rebuilt with straight, broad avenues and modern improvements. Likewise, some of the ancient institutions with cramping influence upon industry, education and government, now that their foundations are shaken, must be renewed from the ground up and may be planned better to meet the needs of the present and succeeding generations.

In Great Britain, following the formation of numerous special agencies, a ministry of reconstruction was established, with an elaborate organization, for the purpose of securing a more comprehensive and better correlated consideration of the various problems. A number of useful reports have been published by different committees; and some legislation of importance has been enacted, such as the acts on education and revising the system of representation in the house of commons. But it cannot be said that a systematic policy has been worked out, or that definite principles have been established on which such a policy should be based.

In Russia, and more recently in Germany and Austria, the foundations of the former political, economic and social system have been overthrown; and a process of revolutionary reconstruction is under way. The result, or even the agencies through which the result may be attained, cannot as yet be definitely predicted.

In the United States, where the physical changes wrought by war have not been relatively so great as in the case of the other belligerents, there has been less official concern manifested in reconstruction, although there has been much popular discussion. While many individuals and organizations, national, state, municipal, corporate and private, have taken up one phase or another of the reconstruction problems, there has not been the unity of action nor national control such as has been attempted abroad. In summing up the domestic situation, President Wilson in his address to Congress on December 2, 1918, stated: "I have heard much counsel as to the plans which should be formed and per-

sonally conducted to a happy consummation, but from no quarter have I seen any general scheme of 'reconstruction' emerge which I thought it likely we could force our spirited business men and self-reliant laborers to accept with due pliancy and obedience."

Prior to this authoritative statement efforts had been made in Congress and elsewhere to provide machinery comparable to that existing in Great Britain, under the assumption that the war might continue indefinitely and with corresponding destructive changes. In particular, on April 5, 1918, George B. Francis of New York City presented in the house of representatives the importance of early action and cited the work already undertaken in Great Britain, France and Germany.[2]

On September 27, 1918, Senator Weeks of Massachusetts submitted Senate Concurrent Resolution 21, to create a joint congressional committee on reconstruction, composed of six senators and six representatives.[3] On October 2, 1918, a similar resolution was submitted to the house of representatives by Martin A. Madden of Illinois, as House Concurrent Resolution 53, and was referred to the committee on rules.

On October 3, Senator Overman of North Carolina, chairman of the senate committee on rules, introduced a bill (S. 4968) to provide for the creation of a federal commission on reconstruction, of five persons to be appointed by the President. This was referred to the committee on judiciary, but no report has been made upon it.

At about this time some of the officials connected with the Council of National Defense prepared tentative plans for utilizing the machinery and experience of this widely ramifying but temporary organization in the solution of reconstruction difficulties. It was urged that the war industries board with its full knowledge of industrial conditions should be thus utilized to meet conditions of peace; also the war trade board, the food and fuel administrations and other organizations should be continued for a time for the benefit of the public, employing the skilled force which then existed and which might serve to expedite the smooth

[2] *Congressional Record*, April 5, 1918, pp. 5077–5079.

[3] Laid on table, see *Congressional Record*, September 27, 1918.

return to peace conditions of many of the great undertakings disturbed by the war. Somewhat elaborate plans and discussion of various phases of reconstruction were outlined but apparently these never reached the stage of publication.

The National Research Council also undertook through a committee on reconstruction problems an inquiry into the general field, and brought together a mass of data concerning the various agencies and activities, these indicating the broad public interest in the matter and the need of general plans not only for coordinating the efforts of national departments and bureaus but also those of state, municipal and other organizations. It also appeared from this inquiry that numerous private bodies such as scientific societies have been attacking the problem from various viewpoints and that the labor unions as well as the business men of the country have come to appreciate the importance of being prepared to meet the exigencies as they arise in the "unscrambling" of war activities.

AGENCIES AT WORK

National Agencies. The various bodies at work, as indicated above, may be considered under the head of national, state, municipal, corporate or private. In the national government many of the permanent departments and their bureaus, also the miscellaneous institutions not under any department, are separately giving thought to one phase or another of reconstruction. It is, however, characteristic of such agencies that while theoretically coöperative there is practically little real correlation of effort by many of the bureaus. Even within the subdivisions of large bureaus each is proceeding quite independently of the others and with little knowledge of what is being attempted by other agencies of the national government. While some duplication is thus involved, yet consolation may be drawn from the fact that many of these organizations are kept from "dry rot" by this open or partly concealed rivalry.

Reviewing these national agencies in somewhat arbitrary order, the following chief activities may be mentioned:

The department of state as part of its regular routine is concerned with the reconstruction of treaties of peace and other agreements which vitally modify the future commerce of this country.

The department of the treasury through its various bureaus enters into innumerable business relations; but in its bearing upon reconstruction chief interest centers possibly upon the bureau of public health, which is endeavoring to build up better conditions of life, and in the federal farm loan board, which is indirectly aiding in larger food production.

The department of war, through the surgeon general, has extensive activities in the reconstruction of crippled soldiers; its board of engineers for rivers and harbors is making recommendations concerning projects for the improvement of navigation; and the general staff has been formulating plans for military policy and administrative organization.

The department of the interior is building railroads in Alaska; and throughout the United States it is endeavoring to extend the reclamation of the arid, swamp and cut-over lands to make available larger areas for agricultural purposes. The bureau of mines investigates methods of mining and strives to improve the safety and efficiency of the mines. The bureau of education is doing what lies within its power to give information on the progress of education, and has many minor interests, such as the promotion of home gardening and increase of foodstuffs through the United States school garden army.

The department of agriculture has perhaps the largest range of work in connection with reconstruction problems, particularly as these touch upon the prosperity of the farmer and reach into the home of the consumer, his food and its cost. It also has charge of the national forests, the study of soils, and development of transportation through the improvement of highways.

The department of commerce, through its consular reports and other publications,[4] diffuses facts needed by the producer and

[4] "Economic Reconstruction, Analysis of Main Tendencies in the Principal Belligerent Countries of Europe," Bureau of Foreign and Domestic Commerce, B. S. Culler, Chief, Miscellaneous Series No. 73, 1918, pamphlet, 75 pp.

merchant; the bureau of fisheries is endeavoring to increase the production of fish.

The department of labor, the youngest of the executive departments, is perhaps the one which under our new ideals is capable of accomplishing the most in the reconstruction of human institutions. Its newly created employment service is far-reaching; and in addition this department is concerned with child labor and with housing conditions. Closely related with it has been the national war labor board, intended to settle controversies by mediation and conciliation, and the war labor policies board.

The miscellaneous organizations of the national government not under any one of the ten main executive departments, noted in part above, are probably of most interest in connection with the present review of reconstruction problems. Being created each for a specific purpose and less hampered by precedent or tradition, they are able to go more directly at the immediate work in hand. Among them are the interstate commerce commission with its many problems bearing upon future control of the railroads and inland navigation; the civil service commission and the bureau of efficiency, each trying to improve government service; the federal trade commission, the shipping board and emergency fleet corporation, the railroad administration, the war trade board, the food and the fuel administrations, the federal board for vocational education, the employees' compensation commission, the board of mediation and conciliation, the American Red Cross, and many other similar bodies.

State Agencies. In each of the states is a temporary and usually effective organization—the state council of defense, coöperating with the Council of National Defense. These bodies have been active through committees, some of which are still being continued for reconstruction purposes, each acting somewhat independently but with nominal connection with the more permanent state office. There is, however, as in the case of the agencies of the national government, something in the nature of rivalry arising between different groups pursuing similar lines, with a resulting weakening of efficiency, counteracted in part by the stimulation due to competition.

Besides these temporary organizations are usually the more permanent bureaus each one taking up from time to time one or another of the phases of reconstruction. These differ in each state but may be classified in alphabetic order as given below. Their effectiveness so far as reconstruction is concerned has not yet been particularly notable; there has been no general policy adopted and, while available, their services have not been largely utilized.

Administrative reorganization.

Agriculture, state boards and various commissions.

Education, state superintendent and boards.

Engineering: in most states there is a state engineer and highway commission dealing with highways, bridges, navigation, irrigation or drainage.

Finance, improvements in budget methods.

Health and sanitation, including state and local boards of health.

Labor conditions and employment.

Lands, where the state owns public lands.

Navigation or navigable canals, and water terminals.

Railroad and public utility commissions.

Water power development and control.

Works in general of public importance, such as public buildings.

In the field of political reconstruction, the Massachusetts constitutional convention has presented several amendments affecting reconstruction problems. The Illinois constitutional convention, voted for in November, offers an opportunity for readjusting the provisions of the constitution of that state to new conditions. Plans for constitutional conventions are also being discussed in Pennsylvania and other states. The conference of state governors, held at Annapolis, Maryland, in December, was largely devoted to problems of reconstruction.

Municipal Agencies. Nearly every city of importance in the United States has seriously considered certain reconstruction problems, particularly in connection with public works which might be provided to utilize the labor of the returning soldiers or of the workers thrown out of employment by the cessation of war

activities. The municipal programs are quite elaborate and involve the following items, not all being considered in any one city:

City charters, amending and revising the organization of municipal government.

Civic policy, development of definite ideals and theory of the peculiar duties and opportunities of the city.

Community centers or places for neighborhood meetings of citizens where acquaintance and fellowship may be promoted, the spirit of civic service generated, and recreation provided.

Education, the improvement of the school system and its extension to older groups, especially to foreigners with a view to Americanization, and agencies for improving and educating citizens upon public affairs.

Finance, the improvement of the budget system and preparing for the citizens clear, concise and simple statements of the receipts and expenditures, so that all may be able to obtain a comprehensive knowledge of these fundamentals.

Fire protection, the study of better methods and the abolition of fire hazards.

Food supply, the continuation and development of home gardens, the improvement of facilities for marketing and for the safeguarding of food.

Health and sanitation, the better education of the people in these matters and improvement of safeguards.

Housing, coöperating with national and state agencies and taking steps to abolish the slums, increasing the opportunities for obtaining small homes, especially those provided with garden facilities.

Labor, coöperating with the national and state agencies in all matters pertaining to employment and labor conditions.

Parks and playgrounds, recognition of the vital importance to the coming generation of opportunities for play and a stimulation of this in convenient localities.

Public improvements or public works in general, making plans so that these may be executed quickly in times of emergency when there is threat of unemployment, these plans to be matured sufficiently in advance so that they will harmonize with the

general policy or scheme of development of the city and add to its health, comfort and attractiveness.

Water supply and sewers, safeguarding an adequate supply of pure water, filtration if necessary, metering to prevent waste, and the extension of sewers or drains to take away the storm waters as well as to dispose effectively of the city sewage and wastes.

Corporate and Private Agencies. The largest and most comprehensive planning for reconstruction in this country has thus far been performed by the corporate and private agencies; namely, by associations of business men, of farmers, of working men, as well as by engineering societies and scientific associations of various kinds. This rather unexpected development is the proper accompaniment of a truly democratic government. It shows that the people as a whole are concerned with these problems before the public officials become deeply impressed with the matter.

Following the study of European activities in reconstruction, it appeared at the outset to be a natural assumption that the national government, leading in war, would take the initiative in preparation for peace. Contrary to such expectations, the reverse has been the attitude assumed by the American people. It is the individuals and the smaller groups or committees throughout the country who have first begun to study these problems of reconstruction notably affecting their own immediate interests or surroundings.[5] Following these, various associations have begun to take up the larger questions, their immediate activities being reflected in the action taken by larger business or municipal organizations, and later somewhat feebly reflected in the work of states, and ultimately considered by Congress and by the national executive.

It is impracticable to attempt to name all these groups, but perhaps the most notable activities have been the conferences on reconstruction called by the Chamber of Commerce of the United States, the National Municipal League and the National Popular Government League. An enumeration of all of these private

[5] *American Problems of Reconstruction. A National Symposium on the Economic and Financial Aspects.* Edited by Elisha M. Friedman, 1918. 471 pp.

agencies would result in a list of several hundred names, but for present purposes they may be quickly reviewed in groups as follows:

Agricultural economists, concerned with the development of agriculture on a better basis, largely through revision of conditions of land ownership, particularly as affected by taxation.

Banking and financial organizations.

City or municipal clubs or leagues, concerned with improvement of urban conditions in general.

Commercial and industrial groups, interested in the development and increase of manufacturing, such as chambers of commerce or organizations of manufacturers.

Economists, including students of public finance, money and banking, insurance and national resources.

Educational and scientific group, made up of organizations and persons concerned with the improvement of educational methods and facilities, and with the increase and diffusion of knowledge.

Engineering group, including national, state, and local organizations made up of engineers of various types. These are directly concerned with reconstruction problems connected with rebuilding railways, highways, waterways, drainage and other public works. With these are groups of engineers concerned with specific problems or branches of engineering, such as mechanical, mining, chemical, electrical.

Forestry group and those concerned with renewable natural resources, closely related to the agricultural economists and dealing largely with national and state problems of the occurrence and distribution of such resources.

Geography and geology group, including students of non-renewable natural resources.

Health and sanitation group.

Highway promoters and builders.

Labor group, including the larger labor organizations, coördinated with the efforts of the department of labor.

Mining group, closely related to the engineers and to the geological organizations, but having special problems.

Political science group, closely related to economics and social sciences, made up largely of students of governmental organization.

Railroad group, having to do with the construction, control and operation of railroads.

Scientific group, concerned with the natural sciences and with the occurrence of natural resources, closely affiliated with the educational group.

Transportation, including railroads, navigation and the like.

CLASSIFICATION OF PROBLEMS

The immediate task of reconstruction is to coördinate the work of these various agencies, especially governmental, each operating independently, often in ignorance of the existence of similar undertakings, and each ambitious to cover its own field. In order to bring about such needful coördination it is desirable to consider the character or scope of the activities or kind of work performed, irrespective as to whether this is being undertaken by national, state, civic or private organizations.

Looking broadly at all of these activities they may be considered as having to do mainly with one or another of three great items: (a) men, (b) materials, (c) ideals or principles of action.

This classification is not only convenient for purposes of discussion, but also develops the order of immediate or pressing importance of the topics to be considered. At the same time it must be recognized that consideration of the reconstruction of men involves materials and ideals, since all are interwoven in the complicated pattern of modern life.

(*a*) *Men and their Reconstruction.* Although as far as the United States is concerned we had hardly entered upon the war, yet we are confronted with the problem of the reconstruction of the crippled or disabled soldiers. Fortunately profiting by the experience of our allies, the war department has already made elaborate provisions, supplemented by those of the Red Cross. Under these every crippled soldier and sailor is retained in the service under pay until his health has been restored as far as is possible, and he has been reëducated or trained in the use of

artificial limbs or other devices so that he can support himself in some one or another of the infinite occupations of modern industry. If he is able to return to army service and is needed, he is still retained; otherwise he is honorably discharged with the full assurance that he can hold his own in civil life.

But the conservation of the soldier is only the first step in the broader subject of the conservation of men and man power. The larger, more far-reaching and difficult problem is that of quietly returning to peace industries millions of munition and other war workers, men and women, who have been employed at relatively high wages and whose means of livelihood is disappearing, following the cancelation of war contracts. With this is involved the whole labor question. There is no probability of return to pre-war conditions, for while the war has been going on there has been an almost unnoted, but far-reaching revolution throughout the world in the whole conception of the relations of labor to industry.

Concerned with this reconstruction of men and man power are many of the agencies previously enumerated, notably the United States department of labor, state bureaus, city employment agencies, labor unions, and almost innumerable other organizations. Each and every one of these is an educational force as well as a powerful political factor, for the wage earner not only has a vote but is using it more effectively than are other classes of citizens.

It must be recognized that while the reconstruction of men and the utilization of man power forms by itself the great factor of after-war peace and prosperity, its success rests to a large extent upon the proper employment of materials.

(*b*) *Materials of Reconstruction.* The agencies which are primarily devoted to study of materials of reconstruction are those which have to do with the natural resources of the nation. Fortunately the conservationists of the past decade have aroused interest in a study of these resources. Due to their efforts there has been a beginning upon a systematic collection of data concerning raw materials and the economics of their use.

As in the case of man power the more inclusive potential agen-

cies are national, such as the various bureaus of the department of agriculture, also the geological survey, which has been studying the mineral resources, and the bureau of mines, which has been investigating methods of mining and improvement of conditions. These and other national bureaus are coöperating with or being aided by state officials and are finding moral support from various scientific associations, such as the American Association for the Advancement of Science, and from the geological, geographical, mining and similar societies, as well as from commercial organizations.

Each and all of these agencies needs to be stimulated to even larger efforts and to a consideration of the relations which the natural resources or raw materials, including agricultural products, have to the human or man power reconstruction. To do this effectively there must be an agreement upon the larger ideals or underlying principles which result in well-considered plans of action.

(*c*) *Ideals of Reconstruction.* No far-reaching result from the study of man power or of raw materials can come about until there has been a general agreement upon fundamental principles. It is true that the working out of these to a form where they will be generally agreed upon may not be accomplished for many months. In the meantime certain details of use of men and use of materials may be satisfactorily entered upon. There should be an early discussion of ideals even though agreement on the statements of them may not be reached for some time.

On most of the fundamental ideals there will probably be sharp division between different parties and groups, representing opposing social or political beliefs; it is well that this should be so and that each ideal should be submitted to the hot fires of discussion.

Specific Problems. Having enumerated on previous pages some of the agencies at work and given a broad classification of their activities, in conclusion it is desirable to consider what are some of the specific problems which must be taken up. These are arranged in a general way in accordance with the above classifi-

cation: (a) men, (b) materials and (c) ideals or plans. The latter, as above stated, may be developed even after the work has been well begun.

(*a*) In this group may be noted the following: Restoration to health of sick and wounded soldiers and sailors. This is already being undertaken by the military authorities and the Red Cross.

Reëducation of crippled veterans for new occupations and return to civil life, conducted by the federal board for vocational education.

Demobilization of the army, now being carried out by the military authorities.

Transfer of labor made available by the cessation of war industries, undertaken by the department of labor through its employment service. With this must be included the arrangements for employment of the returning soldiers who find their previous occupations gone.

Rationing or aiding new industries to make larger opportunities for the unemployed, including in this the extension of land settlement to be undertaken by coöperating agencies of labor, agriculture and commerce.

(*b*) The problems whose solution depend more largely upon the proper handling of materials and natural resources through conservation and use may be stated as follows: location, quantity, character, and transportation of coal, iron, and other ores and nonrenewable resources; to be worked out by national and state geological surveys, bureaus of mines, engineers and transportation interests in coöperation with commercial bodies.

Forests, their better conservation and use—being considered by state associations and bureaus, as well as by the forest service.

Probable demand by manufacturers for raw materials, both at home and abroad, to be worked out by coöperation with manufacturers and commercial agencies.

Conversion of war plants and existing factories to peace-time industries and with a view to better utilization of man power and raw materials—being considered by industrial organizations.

(*c*) Under the head of ideals or plans may be grouped many problems whose solution depends upon the policy to be adopted

by public and private bodies concerned with labor, commerce, industry, education and economics. These ideals and the problems dependent upon them are less self-evident or fixed than are those which pertain to men and materials. They afford a wide range of speculation or of idealism, but among these needs that of a national labor policy stands prominent as the prime requisite for reconstruction; and next to this, land, taxation, and raw materials.

Dean Eugene Davenport has summed up the matter perhaps most concisely in the following statement:

"This war will finish nothing but German dominance, but it will begin everything. It will result in the evolution of a real democracy.

"This evolution will submit to society for progressive solution, a series of detailed problems—every one difficult and every one coördinated with every other one, but all conditioned by the one object—the highest possible development of the human race. These issues will include such difficult problems as:

"An adequate land policy,

"Sanitary and comfortable housing,

"Good food,

"Public insurance for public reasons against preventable or curable disease,

"Universal and free education that really educates,

"Economic opportunity,

"Industry and thrift either optional or enforced,

"Adequate provision for the helpless,

"A clean public service,

"A rational conception as between the individual and state, and between public and private ownership.

"There are a thousand related questions, local, national and international that will thrust themselves upon us for adjustment and more than that, for readjustment, for we shall have the power to see only a little way at a time along the road we shall be travelling."[6]

[6] *The Country Gentleman* (Philadelphia, Nov. 16, 1918), p. 24.

Each of these policies is usually considered by the persons interested as a separate entity and one which may be discussed by itself. This is where danger lies to the country as a whole; namely, in that, with lack of full information, there is inability on the part of the public mentally to visualize the relative proportions of each topic. For example, the settlement of soldiers upon reclaimed lands, important in itself, may lead to the obscuring of larger needs and to divert attention to the detriment of the best interests of the country as a whole. It is exceedingly important, therefore, that all of these problems be cataloged together and be viewed as a whole as well as in detail, so that duplication of effort, conflict of jurisdiction, and neglect of important elements may be avoided.

What precise form and what official authority an agency for this purpose should have are questions on which opinions may differ. There is indeed danger of merely adding to the numerous agencies already at work; and it is not enough to establish new organs and machinery. But there is urgent need for a general outlook over the entire field, and for some agency which, without exercising dictatorial powers over the existing agencies, may help to systemize and harmonize their efforts.

ADMINISTRATIVE REFORM IN FRANCE

JAMES W. GARNER

University of Illinois

For some years prior to the outbreak of the great war the proposed reorganization of the administrative system of France occupied a leading place among the questions of French internal politics. It provoked a flood of discussion in parliament; it was the subject of investigation and report by various parliamentary, extra-parliamentary and inter-ministerial commissions; it was dwelt upon regularly in the annual reports on the budget; it was a standing subject of discussion by the functionaries in their associations and by the political parties in their annual congresses; it was responsible for a vast output of literature in the form of books, brochures and articles; and it occupied a conspicuous place in the declaration of each incoming ministry upon taking office. In the parliamentary election campaign of 1910 no other question, except proportional representation, was so widely discussed by the candidates.[1]

THE CENTRALIZED CHARACTER OF THE FRENCH SYSTEM

In essential principles the administrative organization of France is that which Napoleon created by the famous law of 28 pluviôse in the year 1800, primarily for the purpose of consolidating and perpetuating his personal power. The superstructure has, of course, undergone certain changes through the introduction of the elective principle in respect to mayors and councils and

[1] Of the 597 deputies elected in 1910, 346 had made administrative reform a part of their platforms. The platforms of the successful candidates were published by the state in a volume of 1267 pages under the title, *Professions de Foi et Engagements Électoraux*. The *Professions* were summarized and classified by M. Camille Fouquet and published by the state in a *Rapport sur les Programmes et Engagements Électoraux*. As to administrative reform see the latter publication, pp. 32 ff.

through the process of deconcentration by which various matters have been transferred from Paris to the agents of the central government in the departments, but the base remains largely unaltered, and is still dominated by the centralized principle of the *ancien régime* and the First Empire. As such, it has been the object of increasing attack in recent years by French writers, publicists and politicians who complain that the whole administrative organization is monarchical in spirit and principle, and in striking contradiction to the democratic principle upon which the Third Republic was supposed to have been founded. The "paradox of an imperial bureaucracy coexisting with a republican constitution" is, we are told, an anachronism and as such is responsible for the principal administrative evils from which France has long suffered.[2]

Departments, arrondissements and communes have essentially the same organization that Napoleon gave them, with this difference that the mayors and councils are now elected instead of appointed. The prefects still retain, for the most part, their ancient power; the local authorities are still subject to the same central administrative tutelage; and aside from the right to choose the members of the local councils,[3] the people have no direct share in the choice or control of the administrative authorities. With the exception of the mayors and a comparatively small number of

[2] "We have universal suffrage and the parliamentary régime," says M. Paul Deschanel, now president of the chamber of deputies, "the country is spanned by a network of railroads and telegraphs but our administrative régime dates from the end of the eighteenth century at a time when none of these existed." *L'Organisation de la Démocratie* (Paris, 1910), p. 121. "France," he says, "is not a democracy but a bureaucracy." *La Décentralisation*, p. 11. See also the speeches by M. Deschanel in the chamber of deputies, Jan. 13, 1905, *Journal Officiel*, p. 6; of May 11, 1909, *ibid.*, p. 1003; and of June 21, 1910, *ibid.*, p. 2234. "The truth is," says Professor Barthélemy, "our institutions are monarchical; their democratic character is only partial and more apparent than real." *Revue Pénitentiaire*, June, 1906. For similar criticisms, see Chardon, *Les Travaux Publics*, 2nd ed. 1904, p. 347; Autesserre, *La Centralisation Administrative* (Paris, 1904), pp. 130 ff; Ripert, "La Réforme Administrative" in the *Revue des Sciences Politiques*, Vol. XXVI, p. 390; and Rabany, "Réforme Administrative," in the *Revue Générale de l'Administration*, 1910, p. 7.

[3] The mayors, it will be recalled, are not elected by the people directly but by the municipal councils.

officials and employees appointed by the local councils, all functionaries, from the highway inspectors to prefects, are appointed, controlled, and may be removed by the central government at Paris or by its local representatives.[4] Napoleon has long since disappeared and with him the political régime which he established; political revolutions have followed one another in quick succession, and the Republic is now accepted as the form of government under which the people of France will probably continue to live permanently; but, as stated above, no thorough-going attempt has yet been made to bring the administrative organization of the First Empire into complete harmony with the principles of the republican system.[5]

French writers complain that many matters of purely local interest are administered and controlled by a minister at Paris, who from his office may touch a button and give orders to 89 prefects, 276 subprefects, 36,000 mayors, hundreds of public prosecutors and more than half a million other functionaries.[6] Vivien, writing in 1859, declared that there was not a community in France, however remote, in which the government at Paris did not have an agent to whom it could give orders.[7] And it is even more true today. It is impossible for the ministers or the directors at Paris to give their personal attention to one-tenth of the mass of petty matters that come up from the communes for

[4] Commissioners of police are now appointed by the President of the Republic and may be removed by him. Municipal collectors are appointed by the President or by the prefect, depending on the importance of the commune. Other collectors are appointed either by the prefect or by the subprefect. Conservators of municipal museums are appointed by the prefect. Guards of communal forests are appointed by the prefect from lists of candidates presented by the conservators of forests. Teachers, communal highway inspectors and agents, public weighers, and firemen although their functions appear to be entirely local in character are appointed by the prefect, and the municipal authorities have no voice whatever in their selection. Berthélemy, *Le Contrôle Exercé en France par le Pouvoir Central sur l'Administration des Communes*, in the reports of the *Premier Congrès International des Sciences Administratives* (1910), Vol. I, sec. 1: 4.

[5] "Only Caesar and the distances have been annihilated," says M. Chardon, one of the best known writers on French administration, "'R. F.' is stamped on the reports but they are intended for the Emperor." *Les Travaux Publics*, p. 347.

[6] Cf. Boncour et Maurras, *Un Débat Nouveau sur la République et la Centralisation*, p. 136.

[7] *Études Administratives*, Vol. I, p. 74.

their action; this duty must therefore be shifted to the shoulders of subordinates; it has in consequence come to pass that many matters of local concern are determined by chiefs of bureaus and clerks at Paris rather than by the local authorities who are most interested and who are in a better position to determine them quickly and perhaps more wisely.[8]

Not only is the administration itself highly centralized but to a large extent the principle of centralization prevails in respect to legislation of a local character. The legislative competence of the local councils is much restricted and in consequence the national parliament legislates upon many matters which in the United States are left to local legislative bodies or other authorities. The communes, in consequence, often suffer from the inevitable delays incident to such a system, to say nothing of the inconvenience which results from their dependence upon the national legislature, which, aside from being occupied with a multitude of matters of general interest, is ill-fitted to legislate upon local affairs. Not infrequently the communes are compelled to wait for months for the necessary parliamentary authority to levy an additional tax which has been made necessary by the action of parliament itself in imposing upon them the burden of establishing and maintaining a new service.[9] All writers on French administration seem to be agreed that parliament should surrender, for the most part, its power of local legislation and transfer it to the local assemblies where it would seem more properly to belong. It would not only result in great benefit to the communes themselves but would relieve parliament from the burden of legislating upon local matters for which it has neither time nor knowledge; and at the same time it would free the deputies from the constant pressure to which they are subjected by their constituencies.[10]

[8] Cf. Avenel, *La Décentralisation*, p. 16. The physical impossibility of the ministers giving attention to any but the most important questions of public policy is dwelt upon by M. Raymond Poincaré in the *Revue Bleue* of June 9, 1911.

[9] Cf. Chautemps, *Rapport sur le Budget Général de l'Exercise*, 1912, *Ministère de l'Interieur*, No. 1239, Chambre des Députés, p. 87.

[10] The advantage of this reform is dwelt upon by M. Cheron in his *Rapport sur le Budget Général de l'Exercise*, 1912, No. 1260, Chambre des Députés, p. 88.

ADMINISTRATIVE CONTROL OF THE LOCAL AUTHORITIES

While the mayors of the communes are now chosen by the municipal councils and while both communes and departments have popularly elected councils, they are subject to strict control by the central government at Paris or by its representatives in the department. This control the French writers call the *tutelle administrative*, and it is exercised both over the authorities themselves and over their official acts. Thus the mayor may be removed from office by decree of the President of the Republic, and he may be suspended from his functions for a period of three months by the minister of the interior, and for one month by the prefect; and this power has sometimes been exercised, it is charged, for getting rid of socialist mayors or others who were in political opposition to the government. In this way, the right of the municipal council to choose a mayor who represents the political views of the local inhabitants may be reduced to naught.[11] Municipal councils may be dissolved by decree of the President of the Republic, and in cases of urgency the council may be provisionally suspended by the prefect, in which case a special delegation is appointed to take its place. This power was frequently employed during the Second Empire for the purpose of getting rid of politically hostile municipal councils and replacing them by more docile commissions.[12] It has occasionally, though

[11] This, of course, has been a source of much complaint. The practice of the government of summarily dismissing politically hostile mayors who nevertheless had the confidence of the local inhabitants led to the enactment of a law in 1908 giving the mayor a right to a hearing and requiring orders of suspension or dismissal to be accompanied by a statement of reasons. See Barthélemy, "Le Mouvement de Décentralisation" in the *Revue du Droit Public et de la Science Politique*, Vol. XXVI, p. 131. The same law relieved mayors from the necessity of obtaining the consent of the prefect in order to resign their offices, and was passed as a result of the events following a "strike" of mayors in the Midi in June, 1907, when many of them abandoned their offices, for which act they were prosecuted by the government.

[12] J. Barthélemy, article cited above, p. 117. The prefect, it may be added, has the power to dismiss any member of the municipal council whom he regards as ineligible, but the latter has the right of appeal to the prefectoral council. Likewise the prefect may remove any member of the council who absents himself without valid excuse from three successive meetings of the council, and the council of state may declare vacant the seat of any member who refuses to perform a duty required of him by law.

rarely, been exercised since the establishment of the Third Republic.

Certain acts of the municipal council are also subject to the *tutelle administrative*. Thus measures affecting the disposition of communal property, those relating to the maintenance of highways, those relating to financial affairs, such as the budget, supplementary appropriations and loans,[13] and acts for the establishment of fairs and markets, require the approval of a representative of the central government, usually the prefect but sometimes the council-general of the department, the President of the Republic or even Parliament itself.[14] Various other acts of the municipal council require authorization by the council-general of the department. Thus it determines the maximum of the *centimes extraordinaires* which the municipal council may vote, its advice is necessary to alterations of communal boundaries, the maintenance and cutting of communal woods, the fixing of the rate of taxes which may be levied on dogs, etc. Any act of a municipal council may be annulled by the prefect for excess of power, that is, if it is considered *ultra vires*, and so may any act in the passage of which a member of the council had a personal interest.

The prefect may annul or suspend the execution of police measures taken by the mayor.[15] The appointment of police agents, inspectors, and the like requires the approval of the subprefect, and they may be dismissed by the prefect, but not by the mayor.

[13] The taxing power of the municipal councils is subject to many restrictions. In general they may levy only such taxes as are authorized by law and the amount authorized is limited. In some cases they may levy extraordinary taxes up to a certain amount. In other cases they may levy only with the approval of the central authorities, sometimes the President of the Republic, sometimes the prefect and sometimes the council-general. The whole subject is fully discussed by Basdevant in a report entitled *Pouvoir des Autorités Locales d'Etablir des Impôts ou Taxes*, in the proceedings of the *Premier Congrés International des Sciences Administratives* (1910), Vol. I, sec. 1, pp. 7 ff and by Delpech, *Pouvoirs des Autorités Locales en Matière d'Emprunts, ibid.*, sec. 1, pp. 4 ff.

[14] H. Berthélemy, *Droit Administratif*, 6th ed., p. 192.

[15] In cities of over 40,000 inhabitants the organization of the police force is regulated by decree of the central government. Since the municipality bears the expense, the *avis* of the municipal council is required to be taken but its disapproval has no effect.

In consequence, the municipal council occasionally finds itself under the necessity of abolishing an office to get rid of an objectionable police official, since the mayor has no power to remove the incumbent.

Any ordinance (*arrêté*) of the mayor may also be annulled or suspended by the prefect; and in case the mayor refuses or neglects to perform any duty prescribed by law, the prefect may, after requiring him to perform the act, proceed himself or by a special delegate to execute the act. If the duty required is one which devolves upon the mayor as agent of the central government this power thus conferred upon the prefect is entirely logical; if on the contrary, the duty is one which rests upon him in his character as agent of the municipality, the exercise of this power involves a distinct encroachment upon the freedom of the municipality. Most of the French jurists interpret the power of the prefect to be limited to acts of the first category.[16] In case the mayor refuses or neglects to take the necessary measures for the protection of the public health or the maintenance of public order or if he is powerless so to do, the prefect may substitute himself in the place of the mayor and proceed to discharge the duty himself.[17] The power thus conferred upon the prefect has, of course, provoked much complaint, for the reason that it is susceptible of grave abuse and involves an encroachment upon even the limited local autonomy which is conceded to the communes.[18]

The council-general of the department, like the municipal council, is subject to the tutelage of the central administrative authorities. It may be dissolved by the President of the Republic both when it is in session and when it is in recess. Its acts may be

[16] Cf. H. Berthélemy, *Droit Administratif*, p. 203.

[17] This power is also conferred on the prefect by special laws in certain other cases, for example, when the mayor refuses or neglects to perform the duty required of him by the law of 1903 relating to the establishment of primary schools. In case the municipal council refuses or neglects to make provision in the budget for an appropriation for the maintenance of a service imposed on the municipality by law, the prefect may himself insert the appropriation in the budget.

[18] Cf. Autesserre, *La Centralisation Administrative*, p. 180, and Molliet, *Le Pouvoir Hiérarchique*, p. 99. See also, Berthélemy, op. cit., p. 200, n. 1.

annulled by decree of the government for excess of power and for violation of the laws and *règlements*. Certain of its acts require express authorization by the central government, notably those relating to finances, the acceptance of gifts and legacies in certain cases, and measures relating to tramways and railways of local interest. The council-general, it may be added, has no power of self-initiation and may not deliberate upon any matter which has not been brought to its attention by the prefect.

It is quite clear from these observations on the *tutelle administrative* that the freedom of the local authorities is still subject to important restrictions. Until 1905 the communes were not allowed to maintain actions in the courts or before 1901 to take a gift or legacy, under condition, without an authorization from the prefect. Even now they do not appear to be entirely free to choose the names of their streets,[19] adopt plans of alignment, construct bridges, establish tramways or locate public fountains.

DEFENSE OF CENTRAL CONTROL

Although the *tutelle administrative* to which the local governments are subject has long been an object of never ceasing attack by French writers, the principle is defended, even by some who advocate a larger decentralization and a wider autonomy for the communes. It is necessary, they argue, for the protection of the taxpayers against the extravagance and wastefulness of municipal councils, as well as the citizens generally against possible arbitrariness of mayors who through their rather large ordinance power might violate the rights of individuals. The finan-

[19] Theoretically the municipalities do have the right to determine the names of their streets and public places, but when Waldeck-Rousseau was president of the council of ministers he called the attention of the prefects to the fact that such designations as had the character of public homage could only be authorized by decree of the President of the Republic. "You must abstain," he said, "from submitting to me propositions tending to confer homage of this kind upon living persons or on those upon whom history has not yet pronounced judgment." MacMahon vetoed the acts of many municipal councils which attempted to honor Thiers in this way, perhaps, says Avenel (*La Décentralisation*, p. 52) for the reason that history had not at that time rendered judgment upon the liberator of France and the founder of the Republic.

cial powers of the communal authorities especially, they argue, must be kept in check by means of some form of central control,[20] otherwise they would dissipate communal property, waste their resources, indulge in socialistic undertakings of one kind or another, burden future generations by heavy loans and oppress property owners by means of burdensome taxes.[21] The financial history of many communes proves that they have shown a propensity to negligence, extravagance and prodigality which has afforded a pretext if not a valid reason for interference on the

[20] Communal loans which are reimbursable out of the ordinary revenues do not require the authorization of the central authorities; but those which exceed this amount require the authorization by the prefect and the approval of the council of state. Before 1902 authorization by the President of the Republic and even by Parliament was necessary in the case of certain loans. See Delpech, article cited, pp. 12–14.

[21] For a defense of the *tutelle administrative* particularly in respect to the financial powers of the communes, see Barthélemy in the *Revue du Droit Public*, Vol. XXVI, p. 152; Rabany, in the *Revue Générale de l'Administration*, 1910, p. 11; Ripert, in the *Revue des Sciences Politiques*, Vol. XXVI, p. 402 ff; La Ferrière in the proceedings of the *Premier Congrès International des Sciences Administratives*, Vol. I; Delpech, *ibid.*, Vol. I; Colson, *Cours d'Economie Politique*, Book IV, 2nd ed., p. 61; Autesserre, op. cit., p. 170; Molliet, op. cit., p. 97; Roden, *La Réforme Administrative par la Réforme Géographique*, p. 190–192; Imbart de la Tour in the *Revue Politique et Parlementaire*, Vol. XXII, pp. 84 ff; the *Rapport* by Chautemps, cited above, p. 19; and Avenel, op. cit., p. 23. The central authorities have usually, it must be said, shown great liberality in permitting the municipalities to incur long-time loans and to levy taxes in excess of the limit fixed by the law. Thus the debts of the communes between 1898 and 1907 increased from 3,682 million francs to 4,166 millions; in 1906 fifty departments out of 89 were authorized to incur loans for a longer period than that fixed by law. In 1905 the centimes additional of the communes and departments reached 229 in the department of Aude, 225 in Savoy, 263 in Upper Savoy and 356 in Corsica—all of which, says Ripert in the article cited above (p. 153), proves that the state cannot surrender its financial control over the local governments. Delpech in his article referred to above gives some interesting statistics showing the extravagance of the cities in incurring loans. See also the *Bulletin de Statistique*, Vol. XXXIII (1909), p. 501. Professor J. Barthélemy answers the charge that the policy of the central government in respect to the financial activities of the local governments has been to stifle them and to prevent them from engaging in useful undertakings. In 1906, he says, 58 departments were authorized to incur loans for a period exceeding the legal limit. In the case of 32 of them the period of the loan reached 50 years. See also the statistics which he publishes regarding the amount of *centimes additionnels* levied by the departments and communes in 1905. *Revue du Droit Public*, Vol. XXVI, p. 153.

part of the central government. In France, as in the United States, the local authorities are often charged with the execution of state laws, and it is upon them that the state largely relies for the protection of the public health, the preservation of public order and the performance of other services which concern not merely the local inhabitants but the people of the entire country. The refusal or inability of the local authorities to perform the duties thus imposed upon them by the state makes necessary some form of central control and the French very properly, it would seem, believe that the more effective method of control is administrative rather than legislative.[22]

Some French writers and publicists, while frankly recognizing the necessity of some form of central control over the local authorities, object to its exercise in such large measure by the prefect or the minister of the interior. M. Deschanel, president of the chamber of deputies, would vest the control in the departmental commission, on the ground that it is both absurd and dangerous to put an elective mayor or city council under the tutelage of a centrally appointed functionary.[23] The prefect, it is argued, is under the temptation to exceed his authority or to neglect his duty when the interests of the taxpayers require action, as the decisions of the council of state frequently show, or he is under the temptation to exercise his power for political purposes. Even if he were not under such temptation or were competent to exercise his control wisely, it is often a physical impossibility for him to give his personal attention to all the important matters of communal interest which require his consideration, especially in the larger departments some of which contain more than 500 communes. The result is, the communal budgets are in fact often passed upon by clerks in his bureau who exercise the *tutelle* in this and other matters, leaving to the interested parties the

[22] Professor J. M. Mathews has pointed out that in many communities of the United States state law goes unenforced and indeed state authority is sometimes defied by the local authorities charged with enforcing it, and the state authorities are powerless to prevent it because they have no power to remove recalcitrant local officials or otherwise control their acts. *Principles of American State Administration*, especially pp. 422 ff.

[23] *La Décentralisation*, pp. 63, 73.

right of recourse to the council of state at Paris, which, it may be added, has in recent years come to exercise more and more control over the acts of the municipal councils. Thus side by side with the administrative tutelage has developed a *tutelle contentieux* which has in fact proved more efficacious than the control of the prefects in compelling the municipal authorities to observe the law and respect the rights of the taxpayers and at the same time it has proved to be a valuable defense against the arbitrary conduct of the prefects themselves.[24]

Finally, it is argued, the necessity of obtaining the approval of the prefect to many acts of the municipal councils not infrequently results in long delays which seriously interfere with the carrying out of urgent municipal policies. To remove this cause of delay without abolishing the control of the central administration some have proposed to substitute the right of veto or suspension in the place of express approval, that is, let the approval of the prefect be presumed unless he exercises expressly his veto power within a given period, as is in fact the rule in respect to certain acts of the municipal council.[25]

DECENTRALIZATION AND DECONCENTRATION

While the administrative system established by Napoleon has in its essential character survived all the political revolutions of the nineteenth century, it has of course undergone certain modifications which have attenuated in some degree its extremely centralized character. After the downfall of the emperor it found powerful opponents in liberal leaders such as Vieléle, Chateaubriand, Royer-Collard, Benjamin Constant and Odillon Barrot, while De Tocqueville's studies of American democracy had the effect of arousing a strong sentiment throughout France in favor of a larger autonomy for the departments and communes. In consequence, after the revolution of 1830, the departmental and communal councils were made elective, and by decrees promulgated in 1852 and 1861 Napoleon III (one of whose ideas

[24] Cf. Ripert, op. cit., p. 403, and Rabany, op. cit., p. 11.
[25] Siegfried in the *Revue du Droit Public*, Vol. XXIV, p. 129.

was that whereas one may govern from afar one can administer only from local centers) transferred to the prefects the administration of a large number of local affairs that had formerly been administered from Paris. In 1869 the famous program of Nancy demanding the introduction of the principle of decentralization was accepted by many republican leaders like Jules Simon, Jules Favre, Jules Ferry and Garnier-Pagés and it undoubtedly exerted an important influence on the movement which followed. By the law of 1871, sometimes called the "Charter of departmental liberties," the powers of the councils-general were considerably increased and the number of their acts requiring the approval of the government at Paris was reduced. In 1882 the mayors of the communes were made elective by the communal councils and by the law of 1884 the powers of these councils were extended and the principle laid down that they should regulate the affairs of the communes.[26]

By a succession of laws passed since 1884 the powers of the local authorities, notably in regard to the levying of taxes, have been still further enlarged, the tutelage of the central power over them has been relaxed at certain points, and the congestion at Paris has been relieved by the further transfer of certain affairs of local interest to the prefects and the subprefects, thus shifting the administrative authority to the localities concerned. Recently the communes have been given authority to maintain actions in the courts and to accept legacies without the previous authorization of the central authorities, and other concessions of a somewhat similar kind have been made from time to time.[27]

[26] The law of 1884 reversed the principle hitherto in force by establishing the rule that henceforth the municipal councils should have the general power to regulate their own affairs while the central government should intervene only in exceptional cases. The former rule that the acts of the municipal council should be valid only when approved by the central government was replaced by the inverse principle that the municipal council should regulate by its own deliberations the affairs of the commune. This principle, however, was strictly limited to communal affairs and even as to these there are many exceptions. Cf. Barthélemy in the *Revue du Droit Public*, Vol. XXVI, p. 119.

[27] It is impossible to summarize this legislation here. A review of it may be found in an admirable article entitled "Le Mouvement de Décentralisation" by Professor J. Barthélemy in the *Revue du Droit Public*, Vol. XXVI, pp. 115–155;

A study of the legislation enacted since 1884, however, will show that its importance so far as it involved an inroad upon the principle of centralization is by no means so great as it seems. The fact is, it has been for the most part a work of deconcentration, that is, merely an augmentation of the powers of the central authorities in the local circumscriptions, by a shifting of functions from the ministers to the prefects and from the prefects to the subprefects. The affirmation in the law of 1884 of the principle that the communal councils should regulate the affairs of the communes might be interpreted to involve a wholesale grant of power to those bodies, but the number of acts which still require the authorization or approval of the central authorities is so large that the exceptions almost constitute the rule.

Moreover, the feeble progress thus made in the direction of decentralization has, to a certain extent, been offset by a parallel tendency to restrict the freedom of the communes by imposing upon them additional duties and services which entail large expenditures, and in consequence bring them under the further tutelage of the central government. Thus the laws relating to primary education, inspection of maternal schools, live stock sanitation, free medical assistance, public health and public assistance to infants, the aged and the infirm, have required the communes (and occasionally the departments) to bear the whole or a part of the cost without the laws at the same time increasing their power of taxation or of borrowing. As a consequence, they are compelled to have recourse to extraordinary taxes and loans which require the authorization of the central government, and thus their budgets and to a certain extent their whole local administration are brought still more under the control of the prefect. In short, it means little to give the local authorities the power to regulate their own affairs if their resources are consumed

also his paper in the proceedings of the First International Congress of Administrative Sciences, referred to above. See also Roden, *Réforme Administrative*, pp. 131 ff; H. Berthélemy, *Droit Administratif*, 6th ed., pp. 88–89, 142–176; Ripert in the *Revue des Sciences Politiques*, Vol. XXVI, pp. 390 ff; Autesserre, op. cit., ch. 9; Lucay, *La Décentralisation*, 1895.

by expenditures required by the state and they themselves brought under further tutelage.[28]

There has also been a tendency in recent years for the central government to encroach upon the police powers of the communes on the alleged ground that they have shown themselves incapable or unwilling to maintain public order. Following the anarchist attacks of 1893 special commissions of police to aid the judicial authorities in detecting crime were created in various places, and in 1906 the appointment of all commissioners of police was taken away from the prefects and given to the President of the Republic. In 1908 the police administration of Marseilles was taken entirely out of the hands of the local authorities and entrusted to the prefect of the department. As stated above, the organization of the police in cities of over 40,000 inhabitants is determined by decree of the government. Although much criticized as a policy looking toward the nationalization of the police, much may be said in favor of it.[29]

Nearly all writers on French administration complain that the communes in particular lack the freedom and autonomy to which they are entitled under a republican system of government, and as a consequence they are without the vitality and spirit of initiative which De Tocqueville admired in the American townships. They readily admit that the principle of centralization was a necessity for a time after the Revolution, when the old provincial spirit had to be broken and when the masses lacked the capacity for local self government; but that need, they argue, has long since disappeared.[30]

[28] Cf. Ripert, article cited, pp. 401–402; Barthélemy, *Revue du Droit Public*, Vol. XXVI, p. 131 ff.

[29] M. Joseph Barthélemy, one of the most redoubtable antagonists of the principle of centralization, frankly admits that decentralization, so much to be desired in many matters, cannot be thought of in the fields of police and financial administration. The municipal authorities, he says, cannot be depended upon to maintain public order. The municipal police have shown themselves powerless in some cases while in others they have shown a criminal unwillingness to enforce the law. Likewise in respect to the financial activities of the local governments it is impossible to free them from the control of the central government. *Revue du Droit Public*, Vol. XXVI, p. 152.

[30] Cf. Vivien, op. cit., Vol. XI, pp. 13–14.

In 1894 the chamber of deputies by a large majority invited the government to prepare a project for the reform of the administrative system, in pursuance of which an extra-parliamentary commission was created to study the question and formulate recommendations for the consideration of Parliament. The president of the council, Senator Ribot, in transmitting its report to the President of the Republic said: "To simplify and rejuvenate our administrative organism, to abolish useless organs, to give more liberty to the local authorities is certainly a difficult undertaking because it will encounter not only in our laws but also in our customs obstacles that must be overcome; but it will be worthy of a republican government and will redound to the honor of the Parliament which accomplishes it."[31] In 1906 the Clemenceau ministry in its declaration upon taking office promised that the liberty of the local governments should be enlarged, and shortly thereafter an inter-ministerial commission was created to prepare a reform bill and it made an elaborate report in which it stated that among the objects to be accomplished was the development of the capacities of the communes and the emancipation of the local authorities from the control of the central government.[32] But as yet the movement has not advanced beyond

[31] Chautemps, *Rapport*, p. 9: The Congress of the Radical party in 1902 adopted unanimously the following resolution: "Considering that the French people are the most administered in the world and that they maintain at great expense an army of functionaries a large number of whom might be abolished without inconveniences; considering, that local and individual initiative is stifled by the bureaucratic despotism of an overcentralized administration; considering that this excessive centralization is absolutely contrary to the very nature of the republican system and that it constitutes a danger to the Republic, the Congress demands a decentralization of the public services, a new administrative organization of France, an organization which will give greater power to the communal and departmental assemblies, leaving to them the discussion and management of their local interests usurped by the state; in short, the Congress demands the application of the maxim: 'to the State, the national interests; to the departments, regional and departmental interests; and to the communes, communal interests.' " Text in *Le Parti Radical et Radical Socialiste à Travers ses Congrés 1901–1911*, p. 358. As to the views of the Radical party on administrative reform in general, see Buisson, *La Politique Radicale*, pp. 168 ff.

[32] For the text of the report and comments thereon by the chairman of the commission, M. Lallemand, see his *Réorganisation Administrative*, (Paris, 1909).

the stage of discussion. France therefore remains a centralized republic, and in the words of Professor Barthélemy the government suffers from apoplexy at the center and from paralysis at the extremities.[33]

THE "REGIONALIST" MOVEMENT

A proposed reform which has been much discussed in and out of parliament and upon which there is an extensive literature, is the reorganization of the administrative circumscriptions of France either by the abolition of the departments and the substitution of larger areas, or, while retaining the departments for the administration of certain matters, grouping them together into larger units for other purposes of administration. In either case it is proposed to give the new circumscription a council with large powers of local legislation. As such it represents a movement in the direction of federalism which in the view of some French writers is the régime to which France is tending.[34]

In support of the regional scheme it is argued, first of all, that the departments as they now exist are mere artificial circumscriptions without logical basis and are largely lacking in local spirit and vitality; they were created at the time of the Revolution mainly for the purpose of breaking the particularistic spirit of the old provinces against which the Revolutionists were strongly embittered; in many cases they were formed in utter disregard of geographic, economic, and social conditions and without taking into account local habits and traditions. They were purposely made small in area[35] for convenience of administration though

[33] See his preface to the French translation of Jenks' *Local Government in England* (Paris, 1902). Professor Barthélemy declares that the people of France are not free because the administrative institutions of the country rest upon the Napoleonic foundations of the First Empire; they can never be free, he adds, until they break open the cage in which they were imprisoned by the emperor. The problem of liberty in France, he declares, is the problem of decentralization, the resuscitation of the communes and the strengthening of their local life and patriotism.

[34] Such is the thesis, for example, of Pierre Foncin, "Les Pays de France," *Revue de Paris*, Apr. 16, 1898, p. 753.

[35] On the area, population and inequalities of the departments, see Lucay, *La Décentralisation* (Paris, 1895), p. 144.

great inequalities of population actually exist today and this is one cause of the present dissatisfaction.[36] The substitution of larger circumscriptions formed with more regard to historical, geographical and economic interests would, it is contended, revive and strengthen the local life somewhat as it was before the provinces were abolished and make the capital cities of the new regions centers of local, intellectual and political activity, thus depriving Paris of the monopoly which it has so long enjoyed at the expense of the other cities of France. It would also result in large economies by making it possible to abolish many offices and institutions which would have no *raison d'être* if the department were done away with.[37] Finally the conditions which made necessary the abolition of the provinces and the substitution of smaller arbitrary circumscriptions no longer exist and therefore the present arrangement is archaic and unnecessary. The old provincial spirit which was once a danger to the national unity has disappeared or at least what remains of it is harmless and should rather be encouraged than combated;[38] while modern facilities for transportation and communication have so reduced the element of distance that convenience of administration no longer requires that the areas of the departments should be so restricted. That larger circumscriptions can be administered with facility is shown by the fact that the department of the Nord with nearly 2,000,000 inhabitants is administered quite as efficiently as that of Lozère with less than 150,000 inhabitants.

[36] Thouret said in the constituent assembly that the purpose in parceling the country into eighty divisions was to make it possible for one to travel from the remotest point in the department to the seat of government of the department in a single day. Mirabeau said he considered numerous departments necessary for the same reason and also to render it possible for a large number of citizens to participate in the government. Roden, *La Réforme Administrative par la Réforme Géographique*, p. 37.

[37] Roden, op. cit., p. 172, estimates that the saving would amount to at least 120,000,000 francs a year, and that it would reach 25,000,000 in the ministry of the interior alone. It costs as much today, he says, to collect the taxes in Lozère as in the Nord where the receipts are fifty times as great. All the departments regardless of size or population have the same general staff of prefects, inspectors, directors, controllers, etc.

[38] Cf. Brette, "Les Limites et les Divisions Territoriales de la France in 1789, *Revue Politique et Parlementaire*, Vol. LXII, p. 270.

It may also be remarked that larger circumscriptions for judicial, military, educational, police and forestry administration are today superimposed upon the departmental divisions, so that in reality regionalism already exists for the administration of various services.

Vivien in his day complained that the departments were too small and numerous and parliamentary proposals for their reduction were not lacking. Since the establishment of the Third Republic they have been numerous, one of the most notable of the earlier advocates being Gambetta. Two recent projects that have been much discussed were those presented by M. Marlot in 1902, in the name of the commission on decentralization, and by M. Beauquier in 1907. Both *projets* provided for the creation of twenty-five "regions" in the place of the 89 departments. The regions were to be formed with reference to twenty-five cities which are the centers of a surrounding territory having more or less identity of interests.[39] No action has been taken by parliament on any of these propositions, though Premier Briand in his ministerial declaration of June, 1910, expressed himself in favor of regional organization on the basis of economic and other interests and promised to introduce a *projet* embodying this reform.[40]

While the regionalist movement has many advocates the balance of argument seems to be on the side of its adversaries. In the first place, it is pointed out that the departments are no longer mere artificial divisions but that they have developed a

[39] The more important "regional" *projets* are summarized and discussed by Barthélemy in the *Revue du Droit Public*, Vol. XXVI, p. 145 ff. See also Cayla, in the *Revue Politique et Parlementaire*, Vol. X, p. 373; Bluzet, *Les Attributions des Sous-Préfets*, pp. 489 ff, and Beauquiers, *Rapport*, cited below.

[40] *Annuaire du Parlement*, 1901–1911, p. 190. In support of the regional scheme see Senator Audiffried, *Revue Politique et Parlementaire*, Vol. LXVII, p. 425 ff; Brette, *ibid.*, Vol. LXII, pp. 258–281; Angot des Rotours, "Les Departments ont-ils Detruit les Provinces," *Revue Hebdomidaire*, Aug. 5, 1911; Beauquiers, *Rapport* number 731, *Chambre des Députés, session de 1907;* Rolland, *Revue du Droit Public*, Vol. XXVI, p. 99; and J. Paul-Boncour et Maurras, *La République et la Décentralisation*, ch. 1. The principle of "regionalism" was approved by the Radical party in its annual convention in 1903. *Le Parti Radical et Radical Socialiste à Travers ses Congrés 1901–1911*, p. 364.

local life and spirit of their own; they have their own patrimony; and the people have been so long accustomed to these divisions that they could not be abolished without grave inconvenience. Moreover the reconstitution of the provinces under the less objectionable name of regions would, it is said, tend to develop a spirit of particularism and to revive the old provincial spirit which the Revolutionists found so objectionable; and it would, if the regional legislatures were given an extensive power of legislation, substitute variety of legislation in the place of the uniformity that now exists and lead to conflicts between the national parliament and the regional legislatures.[41] Moreover, while centralized administration has been greatly facilitated by the annihilation of the element of distance through modern means of communication and transportation it has at the same time been rendered more difficult by the multiplication of services and of functionaries, thus making necessary small units for administrative purposes. If the departments were retained as subdivisions of the new regions the result would not be simplification and economy but increased complexity and cost; only a new cog would be added to the machine.[42]

If anything is to be gained, therefore, it is necessary to make *tabula rasa* of the departments and create entirely new and larger divisions; that is, the reform must be radical if anything.[43] The mere superimposition of larger divisions upon the departments unaccompanied by the introduction of federalism would not in itself remove the real sources of discontent, which are excessive centralization, administrative tutelage and the intolerable slowness which characterizes the functioning of the administrative machine. Both simplification and decentralization, the revitalizing of the communes and the development among them of a more vigorous local life and initiative are the real objects to be sought.[44] Both simplification and economy may be

[41] Chautemps, *Rapport*, pp. 12–14.

[42] Barthélemy, *Revue du Droit Public*, Vol. XXVI, pp. 144–147.

[43] Ripert, *Revue des Sciences Politiques*, Vol. XXVI, p. 390.

[44] So argues M. Bienvenu-Martin in an article entitled "L'Organisation Régional de la France" in the *Revue Politique et Parlementaire*, Vol. LXVII, pp. 217–239.

achieved without the creation of new regions or the abolition of the existing departments. There is no reason, for example, why a single paymaster-general, a single collector of direct taxes and a single engineer-in-chief, not to mention other departmental authorities, cannot exercise their functions over several departments and thus reduce the cost of administration as is already done in the postal administration and in certain branches of financial administration. Similarly, neighboring departments in the interest of economy might unite for the construction and maintenance of certain institutions or utilities, such as asylums, hospitals, normal schools, and roads; the law of 1871 in fact permits them to do so. Finally, the decentralization of the administrative system can be accomplished quite as easily without abolishing the departments or the superimposition upon them of new and larger circumscriptions.[45]

THE PROBLEM OF THE PREFECTS

Another reform for which there has been considerable demand in France is the abolition of the prefects, the most criticized and the most unpopular functionaries in the whole hierarchy. "Administrative satraps," "supple instruments of the central government," "parasitic survivors of the Empire," "the masters of France," "the natural enemies of liberty," are some of the milder terms frequently applied to them. "I am convinced," says M.

[45] Cf. Demartial, *La Réforme Administrative*, p. 4. M. Cheron, reporter of the general budget for 1912, emphasized this point. "It is not at all necessary," he remarks, "to constitute larger units in order to decentralize the administration. Decentralize with that which already exists. Let the central government limit its action to larger questions of general interest and leave to the local authorities under proper control the administration of local affairs. Give the prefect more initiative and relieve him from the necessity of consulting the ministers except in regard to important matters. Increase the powers of the councils-general and relieve Parliament from the duty of passing upon a mass of projets of local interest which it never in fact considers—a duty which often requires the communes to wait months before they can levy a petty sur tax to meet the cost of an expenditure imposed upon them by the state. Why not give to the local assemblies who know best what are their own needs the power to determine such matters?" *Rapport sur le Budget Général* cited above. Professor Barthélemy points out that the regionalist scheme does not necessarily mean decentralization.

Chardon, councilor of state, "that no serious administrative reform and perhaps no electoral reform is possible unless we begin by ridding ourselves of the prefectoral superstition;"[46] and Professor Jèze adds that no real political liberty will ever be possible in France until the prefect is done away with.[47]

The law attributes three powers to the prefect: (1) he is the representative of the central government in the department; (2) he is the chief executive of the department; and (3) he exercises the power of tutelage and control over the communes. In addition to these functions he fulfills the extra-legal rôle of electioneering agent for the government, and it is his activity in this respect that has become one of the chief causes of his unpopularity. It is frequently said in France that the first requirement of a good prefect is that he should make a good electioneering agent and that his advancement is largely dependent upon his success in carrying the department for the government candidates. "The intervention of the prefects in elections," says M. Jèze, one of the most distinguished and respected authorities on French administrative law, "is most regrettable; it has completely denatured the legal character of the prefectoral office so that in fact the administration has come to be entirely dominated by the electoral point of view. This being true, the first condition of administrative reform is the abolition of this functionary."[48]

The tutorial rôle already noted, which the prefects play in respect to the communes, is also the cause of much of their unpopularity. It is charged that in exercising this control they do not scruple to employ it for political purposes, that they close their eyes to the illegal acts of mayors and councils who belong to the government party and annul the legal acts of those who

[46] *Le Pouvoir Administratif*, pp. 36, 250–279.

[47] *Revue du Droit Public*, Vol. XXVIII, p. 272. Compare also Demartial, *La Réforme Administrative*, pp. 4, 8.

[48] *Elements du Droit Public et Administratif* ((Paris, 1901), p. 278. This is the opinion also of Demartial, p. 8; and Chardon, p. 252. For a defense of the prefect, see Rabany in *Revue Générale de l'Administration*, May, 1910, p. 5, and Monteil, *L'Administration de la République*, p. 166. See also Leyret, *La Tyrannie des Politiciens* (Paris, 1910), pp. 41–54.

are in opposition to the government.[49] As a means of protection against the arbitrary acts of the prefects in the exercise of their tutelary powers the council of state has greatly extended the theory of recourse for excess of power and has developed the doctrine of indemnity according to which any citizen whose interests are injured by the wrongful exercise of the prefectoral *tutelle* or by the failure to exercise it when it is required by law may recover a pecuniary indemnity.[50]

Their ordinance and police powers give the prefects a large opportunity for interfering in local affairs and this is a constant cause of complaint. Moreover, they have the right of appointing nearly all local officers and agents including even the school teachers, and this naturally increases immensely their power of local control. The fact that they are often strangers in the communities which they govern and remain there for only brief periods of time makes it difficult for them to gain the confidence and good will of the inhabitants.[51]

While there is an increasing demand for the abolition of the prefectoral office, mainly because it is a survival of the Napoleonic régime, the larger number of writers and political men recognize the desirability of having in each department a representative of the government, though most of them favor a reorganization of the office so as to bring it more into harmony with republican principles. They would have the prefect's power of *tutelle* over the local authorities reduced or abolished entirely and vested in a collegial body like the prefectoral council or the departmental

[49] Chardon, *Pouvoir Administratif*, p. 251; Jèze, *Revue du Droit Public*, Vol. XXVIII, pp. 278–279, also his *Droit Public et Administratif*, p. 160. A deputy in his electoral program in 1910 referring to the "exorbitant powers" of the prefects declared that it was possible for them completely to annihilate the liberties of the communes without even violating the law or exercising their power arbitrarily. Fouquet, *Programmes et Engagements Electoraux, Rapport*, number 385, *Chambre des Députés*, 1910, p. 35.

[50] A good example is the Delpech case described in the *Revue du Droit Public*, Vol. XXVIII, p. 283.

[51] The practice of constantly shifting the prefects about from one department to another has been much criticized. Georgin (*Le Statut des Fonctionnaires*, Paris, 1912, p. 626) mentions one department in which twelve prefects arrived and departed in a period of eleven years.

commission; they would limit his power of interference in the petty affairs of the communes; they would deprive him of a large part of his power of appointment and give to the local authorities the selection of all officers and employees whose duties are purely local; and they would abolish his rôle as electoral agent for the government and reduce him to the position of a purely administrative functionary. These reforms would at least remove the chief causes of his present unpopularity and might also increase his efficiency as an administrative functionary.

THE SUBPREFECTS

One of the reforms which the republicans have demanded ever since their accession to power is the abolition of the office of subprefect,[52] and for many years the chamber of deputies with a few exceptions annually struck from the budget the appropriation for the maintenance of these alleged useless functionaries;[53] but each time the senate, usually upon the demand of the government, restored the appropriation, and the lower chamber yielded.[54] Like the prefect the subprefect was a creation of Napoleon and like him was expected to be a loyal agent of the emperor and a ready instrument for the maintenance of his supremacy. Like the prefect he has survived all the revolutions that have overturned the political constitutions of France, and when the Third Republic was established, he was left undisturbed by the monarchist majority in the National Assembly which saw in him a possible agent for keeping alive monarchical traditions and of perpetuating monarchical institutions. At a time when,

[52] See the speech of M. Pierre Leroy-Beaulieu in the Chamber of Deputies, Nov. 30, 1911, *Journal Officiel*, p. 3140. The Radical party at its annual convention of 1905 voted in favor of abolishing the office, which it declared was merely a useless cog. *Le Parti Radical et Radical Socialiste à Travers ses Congrés 1901–1911*, p. 358.

[53] The first instance was in 1886; the last in Nov., 1912. See Berthélemy, *Droit Administratif*, p. 139, n. 1.

[54] Many deputies have voted for the maintenance of the subprefectoral institution although favoring its abolition, for the reason that they are opposed to the policy of trying to bring about administrative reform through amendments to the budget. Chautemps, *Rapport*, cited above, p. 30,

owing to the difficulties of transportation, a journey of several days often separated the citizens of a remote commune from the prefecture, there may have been some justification, so it is argued, for such an office; but under present conditions it is both largely useless and incompatible with the political constitution of the country. Except for the appointment of a few petty officers, the issuing of hunting permits, administering oaths and authorizing certain establishments, the subprefects have almost no independent powers, but are chiefly agents of information and of transmission between the communes and the prefecture—mere "letter boxes" as they are frequently styled—and as such they are impediments to the expeditious transaction of public business. Acts of the municipal authorities which must be referred to the prefect and communications which he may have to make to the local authorities, instead of being transmitted directly from the one to the other, are obliged to wait for days or weeks in the bureau of the subprefecture.[55]

Like the prefects, the subprefects are also electioneering agents for the government, and if one may believe some of the French writers on administration this is their chief preoccupation.[56] They attend political meetings as representatives of the government, exercise a sort of political surveillance over functionaries in their arrondissements, keep the government informed of local political conditions, and use their influence to bring about the election within their districts of deputies in sympathy with the government and of senatorial delegates approved by the government. As a consequence they are largely dependent upon

[55] Cf. Bluzet, *Les Attributions des Sous-Préfets* (Paris, 1902), p. 525; de Mesmay, *La Question des Sous-Préfets* (Paris, 1907), p. 55; and Leroy-Beaulieu, *Journal Officiel*, 1911, p. 3441.

[56] Jèze, *Elements*, p. 138; de Mesmay, op. cit., pp. 43, 55. Berthélemy, *Droit Administratif*, p. 138; Hauriou, *Précis*, 7th ed., p. 241; the *Temps*, Oct. 10 and Nov. 28, 1912. The *Temps*, however, maintains that the government not only has an undoubted right to see that prefects and subprefects do not actually oppose its policies but that it may require them to put their services at its disposal. See also a similar defense of their political activity in Arnaud, "Le Rôle Social du Sous-Préfet," in the *Revue Générale d'Administration*, June–July, 1907, separately reprinted, p. 7.

the deputies for their appointment and advancement, and are in turn controlled by them so much so that one sometimes hears a deputy speak of "my subprefect" and "my arrondissement," as if the former were his "slave and the latter his fief."[57]

In defense of the subprefect it is argued that the government must have in every locality an agent upon whom it can depend for information and for the execution of its orders, especially so long as France remains a centralized state. It is asserted that dependence cannot be had upon the mayors of the communes for the reason that they are not the appointees of the government and are not only frequently opposed to its policies but are occasionally in open revolt against it.[58] As administrative agents they are also a necessity, particularly in the large departments which contain several hundred communes, over the authorities of which the prefect is required to exercise a tutelary control, and in all of which it is considered desirable that he should occasionally make visits. This being a physical impossibility he must depend upon the subprefects to represent him in the discharge of such duties. To abolish these latter agents therefore would be to impair seriously the control of the state over the local governments and to withdraw the citizens of remote communes from the benefit of close contact with the administration.

As agents of information and surveillance the subprefects are considered by the government to be a necessity. Among other duties they visit the communes and acquaint themselves with local conditions and needs; they prepare reports to the government concerning infractions of the laws and ordinances by the local authorities who are charged with enforcing them, and make recommendations for needed legislative or administrative action, etc. If, therefore, they were done away with, inspectors or other functionaries under a different name would have to be sub-

[57] See the *Temps*, Nov. 7, 1911, and Oct. 10, 1912. "The evil customs of our electoral régime have made the sub-prefect a courtier of the Deputy of his arrondissement. It is no secret that today he is chosen by the Deputy and counts upon his influence to secure promotion. . . . Political agent of the government and protégé of the members of Parliament he passes his life serving them and being served."

[58] Cf. Bluzet, 475; de Mesmay, 56.

stituted in their places. Finally, they play, or should play, a useful social and educational rôle, especially in the more backward communes where progress along educational, sanitary, industrial, and even political lines has been slow.[59]

Recognizing the utility of the subprefectoral office but convinced that the number of incumbents is much larger than modern conditions require, various writers and members of Parliament have advocated a reduction, especially in the smaller departments, and the devolution of their duties upon the secretary general of the department or some other official. Still others hold that the proper solution of the problem is neither the abolition of the subprefect nor a reduction of their number but a radical reorganization of the office, chiefly by the enlargement of their authority and independence of action. From being the mere mouthpiece of the prefect they would make him a more independent and responsible official, give him the power to issue ordinances and ameliorate his position from the point of view of dignity and emolument, in short, give the office somewhat the same character as that of the German *Kreis Director*. This was the recommendation of the inter-ministerial commission on administrative organization of 1906,[60] and it has been advocated by M. Paul Deschanel and many other writers on French administration.[61]

THE COUNCILS OF PREFECTURE

Like the other Napoleonic administrative institutions which still survive in France the prefectoral councils have in recent years been the objects of frequent attack, and numerous legis-

[59] This function of the subprefect is emphasized by Arnaud in "Le Rôle Social du Sous-Préfet Dans une Démocratie," Paris, 1907. For further defense of the subprefect see Baron J. Angot des Rotours in the *Revue Hebdomidaire*, Apr. 21, 1906, pp. 257–267; an article by "an old auditor and councilor of State" entitled "La Question des Sous Préfets et la Réforme Administrative" in the *Revue Politique et Parlementaire*, Vol. XXV, pp. 300–343; and Montchanin, *Le Sous-Préfet* (Paris, 1893).

[60] Lallemand, *Réorganisation Administrative* (Paris, 1909), pp. 32–48.

[61] Deschanel, *La Décentralisation*, pp. 149–181; Avenel, *La Réforme Administrative*, pp. 54–55; Boncour et Maurras, *Début Nouveau*, p. 157; Roden, op. cit., p. 54; Chautemps, *Rapport*, pp. 30–32.

lative proposals have been made either for their abolition or their reorganization in the interest of economy and democracy. We are told by one of the most distinguished writers on French administration that they are "completely discredited, ignored by the great public which regards them as employees of the prefecture," that they are useless organs and that about all one can say in their favor is that they are inoffensive.[62] Their members are too poorly paid to attract men of experience and capacity,[63] (about half of them receive only four hundred dollars a year); they have no future, since they are almost never advanced to the higher positions in the administration, and they have been unable to win general popular confidence or respect.

The prefectoral councils constitute administrative courts of first instance, they approve the accounts of the smaller communes and of certain public institutions and of financial officials, they grant authorizations for the establishment of hospitals and charitable institutions, issue permits to such institutions to bring actions in the courts, and they constitute an advisory council to the prefect, who is required to consult them before taking action in certain cases, though he is not obliged to follow the advice they give him. The law makes the prefect the presiding officer of the council, when it sits as an administrative court; and this has been a cause of criticism for the reason that such a position gives the prefect, who is often a party in the cases that come before it, too great an influence over its deliberations.[64] Another objection to the council, as it is at present organized, is that it combines the functions of both an organ of active administration and an administrative court, in violation of the sacrosanct maxim of Roederer that "to administer is the act of one, to judge the act of several,"[65] and also of the principle of the

[62] Jèze, *Bulletin de la Societé d'Études Legislatives*, No. 1, 1910, p. 26.

[63] See Chautemps, report on the budget (cited above), p. 37.

[64] As a matter of fact, however, the prefect, it is said, has almost ceased to preside over the sessions of the council.

[65] Cf. Chardon, *L'Administration de la France*, p. 357, and Berthélemy, *Droit Administratif*, p. 920, who says there should be an absolute separation of the functions of administration and of justice and for this reason if for no other the councils should be reorganized. See also Rolland in the *Revue du Droit Public*, Vol. XXVI, p. 96.

separation of powers which has always been a cherished theory of Frenchmen.

Statistics of the affairs which the prefectoral councils annually handle give the impression that they transact a vast amount of business. Thus in 1907 eighty-seven councils disposed of a total of 372,965 matters, or more than 4000 for each council. But in fact more than 90 per cent of the cases that come before them consist of complaints against direct tax assessments or of accounts to be passed upon, in most of which cases the councils merely approve as a matter of form the decisions prepared in the bureaus of the prefecture.[66] The advisory functions of the councils are even more illusory, though the statistics might easily lead one to the contrary conclusion. In 1907 the councils were consulted by the prefects in 20,545 cases, but in reality their advice was merely formal. In most instances the prefect acts upon his own initiative and afterwards submits his decisions to the council merely to conform to the requirements of the law. Many persons have advocated the abolition of this superfluous formality by giving the prefect the power to act in all cases without consulting the council, thus bringing the law and the practice into accord.[67] When the entire work of the councils of prefecture has been thus sifted down, there remains for all of them about 1300 or 1400 cases involving disputes over contracts for the erection of public works, about 500 election controversies, some 200 or 300 applications for authority to maintain actions in the courts, and a thousand or more cases involving contraventions of the *grande voirie*, which when distributed among the eighty-nine councils leaves only a small number of matters for each and requiring on an average of not more than one session a week.[68]

[66] Thus in 1895 the various councils throughout France adjudged 369,498 affairs, but of these only 5,549 were actually examined and discussed; the others being approved without observation. D'Angelis, *Le Projet de Réforme des Conseils de Préfecture* (Paris, 1909), p. 70.

[67] Cf. D'Angelis, p. 73, and Chardon, p. 374.

[68] On these points see the report of M. Jèze cited above; Chardon, op. cit., pp. 357, 373–376; D'Angelis, pp. 70–71; Berton, *La Réforme des Conseils de Préfecture* (Paris, 1910), pp. 11–12; also an article by the same author in the *Revue Gén-*

Since 1886 numerous *projets* have been submitted to Parliament for the reorganization or abolition *in toto* of the councils. Some, like the Clemenceau *projet* of 1908, have proposed to abolish their powers as administrative courts and to confer them upon an administrative judge, one for each department.[69] Some, like the Fallières and Barthou *projets* of 1887 and 1896, have proposed to confer their jurisdiction as administrative courts upon regional administrative tribunals, twenty-two in number for all France, at the same time depriving them of their consultative functions and their power of active participation in administration; while still others, like the Morlot *projet* of 1899, have proposed to suppress them entirely and devolve their administrative functions upon other functionaries and distribute their contentious jurisdiction between the judicial tribunals and the council of state.[70] It is pointed out by the advocates of the last mentioned *projet* that the judicial tribunals already have jurisdiction of such matters as direct taxes, contraventions of the *petite voirie* and of certain election contests and hence they might without any violation of principle be given jurisdiction of questions relating to indirect taxes, contraventions of the *grande voirie* and of controversies growing out of elections to the arrondissement councils.

Against the Clemenceau *projet* it is argued, however, that the

érale d'Administration, 1910, 1, p. 257 ff., and 11, pp. 24 ff. M. D'Angelis estimates that of the more than 300,000 affairs passed on by the councils of prefecture in 1895 the average number of matters actually examined and considered by each council in France was about 90. M. Morlot who introduced a bill in 1899 for the abolition of the councils reached essentially the same conclusion. M. Berton estimates that in 1902 the average number of affairs actually considered by each council was about one hundred and fifty per year. M. Chardon fixes the number at about one hundred.

[69] The text of the Clemenceau bill is analyzed in the *Revue du Droit Public*, Vol. XXV, pp. 707 ff.

[70] For discussions of these various *projets* see D'Angelis, pp. 55–58; Berton, p. 3 ff; Bellenger, *La Réforme du Conseil de Préfecture* (Paris, 1911), ch. 11; Cremineux, *Les Conseils de Préfecture et la Réforme Administrative* (Paris, 1887), ch. XI; Rolland, "La Réforme des Conseils de Préfecture" in the *Revue du Droit Public*, Vol. XXVI, pp. 95–111; see also the same *Revue*, Vol. XXV, p. 707, and Vol. XXIV, p. 763, for lists of the various *projets* and *propositions* that have been laid before parliament for the reform of the councils.

idea of an administrative court held by a single judge is entirely contrary to the old and well-established French principle of "plurality of judges," a principle which the French will never consent to abandon, especially for the determination of administrative controversies.[71] Against the proposal for regional tribunals, it is argued that the abolition of the departmental councils would result in withdrawing the administrative jurisdiction too far from litigants and thus put them to great inconvenience and expense in cases which frequently involve small amounts or petty affairs.[72] Moreover, the proposal to give the judicial tribunals jurisdiction of administrative controversies is opposed for the reason that recourse to these tribunals is more complicated and expensive and usually involves longer delays than is involved in appeals to the councils of prefecture. It is also criticized as being in violation of the French principle of the separation of administration and justice. Finally, the defenders of the prefectoral councils assert that the criticism to which these bodies have been subjected because the number of matters which they actually pass upon is too small to justify their continued existence really proves nothing against their usefulness; it merely proves that the organization is too elaborate. The logical solution of the problem, therefore, is not their abolition but a reduction of the number of councilors and a substantial amelioration of the situation of those who remain, by the establishment of higher qualifications, better pay and a system of advancement which will insure them higher careers in the administrative service.[73]

[71] Chautemps, *Rapport*, p. 37.

[72] The proposal to substitute regional administrative tribunals in the place of the councils of prefecture was submitted to the council of state for its advice but this body gave a strong adverse opinion, mainly for the reasons stated above. D'Angelis, p. 62.

[73] See also articles on administrative reform after the war, in *Revue Générale d'Administration*, Janv.-Fev., Mars-Avril, 1918; and *Revue Politique et Parliamentaire*, Août, 1918.

CONSTITUTIONAL LAW IN 1917–1918. I

THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1917[1]

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I. INTERSTATE COMMERCE

POWERS OF CONGRESS UNDER THE COMMERCE CLAUSE

The federal Child Labor Law was declared unconstitutional in Hammer v. Dagenhart[2] by a vote of five to four.[3] It forbade the transportation in interstate or foreign commerce of the product of any mine or quarry "in which within thirty days prior to

[1] For preceding reviews of Supreme Court decisions on constitutional questions, see *American Political Science Review*, (1910) IV, 483–497; (1912) VI, 513–523; (1915) IX, 36–49; (1918) XII, 17–49, 427–457, 640–666.

[2] (1918) 247 U. S. 251. See Thurlow M. Gordon, "The Child Labor Law Case," 32 *Harvard Law Review* 45; Frederick Green, "Social Justice and Interstate Commerce, 208 *North American Review* (September, 1918) 387; William Carey Jones, "The Child Labor Decision," 6 *California Law Review* 395; T. I. Parkinson, "The Federal Child Labor Decision," *The Child Labor Bulletin*, vol. 7, no. 2, p. 89 (August, 1918); and T. R. Powell, "The Child Labor Decision," *The Nation*, vol. 107, p. 730 (June 22, 1918), and "The Child Labor Law, the Tenth Amendment, and the Commerce Clause," 3 *Southern Law Quarterly* 175. See also editorial notes in 86 *Central Law Journal* 441, 17 *Michigan Law Review* 83, and 27 *Yale Law Journal* 1092. For articles on the subject written prior to the decision of the Supreme Court, see H. C. Gleick, "The Constitutionality of the Child Labor Law," 24 *Case and Comment* 801; Frederick Green, "The Child Labor Law and the Constitution," *Illinois Law Bulletin*, no. 2, p. 3; Henry Hull, "The Federal Child-Labor Law," 31 *Political Science Quarterly* 519; and T. I. Parkinson, "Brief for the Keating-Owen Bill," *The Child Labor Bulletin*, vol. 4, no. 4, pt. 2, p. 219 (February, 1916), "Constitutional Prohibitions of Interstate Commerce," 16 *Columbia Law Review* 367, and "The Federal Child Labor Law," 31 *Political Science Quarterly* 531.

[3] The majority consisted of Chief Justice White and Justices Day, Van Devanter, Pitney and McReynolds; the minority, of Justices McKenna, Holmes, Brandeis and Clarke.

the time of the removal of such product therefrom children under the age of sixteen years have been employed or permitted to work," with similar prohibitions covering the products of mills and factories in which children under fourteen were employed or children under sixteen were employed more than eight hours a day. The majority opinion misinterpreted the statute and assumed that it permitted goods "to be freely shipped after thirty days from the time of their removal from the factory," whereas it permitted only the shipment of stock on hand thirty days after children had ceased to be employed. The law was so framed as to avoid the necessity of proof that children coöperated in the making of specific articles produced in a factory in which children were employed, and yet to remove any ban on shipment from an establishment which for thirty days had employed only adult labor.

No fault was found with the statute under the due-process clause of the Fifth Amendment, nor was there any consideration of the question whether the prohibition on foreign commerce might be sustained although that on interstate commerce was void. Not a few opinions of the Supreme Court, it will be recalled, have implied that the power over foreign commerce is absolute. Such declarations, however, probably have no bearing on a statute which a court holds not to be a regulation of commerce at all.

The Child Labor case came before the court in a bill brought by two children through their father as "next friend" against a federal district attorney to enjoin the enforcement of the act. The propriety of the procedure was not questioned in the Supreme Court. The injunction granted below was sustained on the ground that the act was unconstitutional in that it was not a regulation of interstate commerce and was an invasion of the reserved powers of the states prohibited by the Tenth Amendment. Mr. Justice Day, for the majority, said that "the act in its effect does not regulate transportation among the states, but aims to standardize the ages at which children may be employed in mining and manufacturing within the states." To this, the minority answered through Mr. Justice Holmes that it did

both: "The statute in question is within the power expressly given to Congress if considered only as to its immediate effects; . . . . if invalid it is so only upon some collateral ground." The majority concentrated their attention on the collateral ground which the minority thought was not within the competence of the court to consider, pointing out that previously the court had "excluded any inquiry into the purpose of an act which apart from that purpose was within the power of Congress."

In dealing with the precedents which had sanctioned congressional prohibitions of interstate transportation, Mr. Justice Day declared that "in each of these instances the use of interstate transportation was necessary to the accomplishment of harmful results," whereas the products of child labor "are in themselves harmless." To this, Mr. Justice Holmes answered: "It does not matter whether the supposed evil precedes or follows the transportation. It is enough that in the opinion of Congress the transportation encourages the evil."

As to the Tenth Amendment, the majority insisted that the act regulated manufacture and that the regulation of manufacture was one of the reserved powers of the states. The answer of the minority was as follows:

"The Act does not meddle with anything belonging to the States. They may regulate their internal affairs and their domestic commerce as they like. But when they seek to send their products across the State line they are no longer within their rights. If there were no Constitution and no Congress their power to cross the line would depend upon their neighbors. Under the Constitution such commerce belongs not to the States but to Congress to regulate. It may carry out its views of public policy whatever indirect effect they may have upon the activities of the States. Instead of being encountered by a prohibitive tariff at her boundaries, the State encounters the public policy of the United States which it is for Congress to express."

In his dissent in the Child Labor case, Mr. Justice Holmes cites Weeks v. United States[4] for the point that the federal Pure Food and Drug Act had been held to apply "not merely to arti-

[4] (1918) 245 U. S. 618.

cles that the changing opinions of the time condemn as intrinsically harmful but to others innocent in themselves simply on the ground that the order for them was procured by preliminary fraud." The Weeks case involved the shipment in interstate commerce of an article labeled "Special Lemon, Lemon Terpene and Citral." The circuit court of appeals had reversed the conviction of the defendant on the count which charged him with shipping goods bearing a false and misleading label, but sustained that on the second count charging the shipment of articles misbranded by reason of being "offered for sale under the distinctive name of another article." To sustain this count, evidence had been offered showing that the defendant's solicitor had secured the order by falsely representing that the article was pure lemon oil, though of second quality, and by exhibiting a sample bottle labeled merely "Special Lemon." These representations made in the intended state of destination were declared by the Supreme Court to be acts of interstate commerce and to make the shipment of articles that did not conform to the representations a violation of the act.

The constitutional questions involved in St. Louis Southwestern Ry. v. United States[5] are somewhat difficult to disentangle from those of statutory construction. The interstate commerce commission had found that Paducah, Kentucky, was discriminated against in favor of Cairo, Illinois, by reason of the facts that shipments of lumber from the South, instead of being sent by the shortest route to Paducah, were routed by way of Cairo, and the local rate from Cairo to Paducah added to the rates from the South to Cairo. The commission ordered the roads to reduce the Paducah rate to the level of the Cairo rate, leaving them free, however, to ship by the longer or shorter route. One road which participated in the traffic, but which did not reach the points of ultimate destination, contended that the order was not a regulation of interstate commerce and was wanting in due process because it compelled it to enter against its will into a partnership with other roads. But the court answered that the road was left free to pick any connecting carrier

[5] (1917) 245 U. S. 136.

it chose and therefore could still choose its partners, that it was not compelled to undertake any interstate commerce other than that in which it was already engaged, that it was discriminating against Paducah as effectively as if its own rails reached that point, and that its acts were therefore within the commerce power of Congress.

Illinois Central Railroad Co. v. Public Utilities Commission,[6] though concerned chiefly with matters of procedure and issues of fact, touches constitutional questions obliquely through the reasoning in the opinion. The decision reaffirmed federal power to prevent discrimination in interstate rates by ordering the raising of intrastate rates; but, on account of the vagueness of the order of the interstate commerce commission relied on, it applied the principle that it should never be held that a federal authority "intends to supersede or suspend the exercise of the reserved powers of a state, even where that may be done, unless, and except so far as, its purpose to do so is clearly manifested."

THE COMMERCE CLAUSE AND THE POWERS OF THE STATES

A. State Taxation and Interstate Commerce

The cases in which it is urged that state taxes are unwarranted regulations of interstate commerce fall into two main groups. In the first group the issue is whether the complaining taxpayer is entirely exempt because the tax is imposed directly on interstate commerce.

York Mfg. Co. v. Colley[7] held that the installation and testing of an ice-manufacturing plant in pursuance of a contract for the sale thereof was so essential to the sale as to be regarded as interstate commerce when the sale was interstate. No permit therefore could be required by a state of a company whose only business within the state was such necessary adjustment of a product shipped from without the state.

[6] (1918) 245 U. S. 493. See 18 *Columbia Law Review* 270, 31 *Harvard Law Review* 1031, and 16 *Michigan Law Review* 379.

[7] (1918) 247 U. S. 21. See 27 *Yale Law Journal* 1094.

But General Railway Signal Co. v. Virginia[8] passed a different judgment on the work of inaugurating a signal system brought from without the state. The work of digging ditches for conduits, and of constructing and painting concrete foundations, which was necessary to the adjustment of the apparatus, was thought to be sufficiently distinct from the interstate part of the entire transaction as to subject the contractor to the taxing power of the state.

So in Dalton Adding Machine Co. v. Virginia[9] no immunity was granted to a corporation that kept in the state a stock of machines for exhibition and trial, exchanged and rented machines located in the state, sold repair parts and accessories from local stock, maintained a repair department and occasionally sold machines from local stock. The opinion of Mr. Justice McReynolds contented itself with stating that a material part of the business was intrastate, without passing judgment on each of the several elements.

In Cheney Brothers Co. v. Massachusetts[10] a state was forbidden to impose a license tax on a foreign corporation that made no local sales but merely maintained an office as headquarters for salesmen and as a place of storage for samples. All orders obtained in Massachusetts were filled from stock in Connecticut, and no orders were binding until accepted in Connecticut.

Five other corporations dealt with in this case were all held to be engaged in independent, intrastate business. The Copper Range Co. and the Champion Copper Co. conducted their fiscal affairs within the state. The Lanston Monotype Co. kept in the state a stock of material necessary for repair work, which it sold and attached when repairs were called for. The Locomobile Company did the same and also exchanged and sold second-hand cars. The Northwestern Consolidated Milling Co. kept agents in Massachusetts who solicited business from Massachusetts retailers and turned the orders over to Massachusetts

[8] (1918) 246 U. S. 500. See 87 *Central Law Journal* 4.
[9] (1918) 246 U. S. 498.
[10] (1918) 246 U. S. 147.

wholesalers to be filled from Massachusetts stock. The fact that the solicitors were not agents of the local wholesalers but acted for the manufacturers without the state was held not important.

The other group of cases deals with complaints that taxes on proper subjects are assessed by methods which involve regulation of interstate commerce.[11]

In Looney v. Crane Co.,[12] International Paper Co. v. Massachusetts,[13] and Locomobile Co. of America v. Massachusetts,[14] it was held that excises on foreign corporations which combine local manufacture or local sales with interstate sales cannot be measured by total capital stock. This had previously been established in respect to foreign corporations engaged in combined local and interstate transportation, and some of the opinions had seemed to rely especially on the economic integration of such local and interstate business. But the court now regards this element as immaterial. In the International Paper case, Mr. Justice Van Devanter observes: "True, those were cases where the business, interstate and local, in which the foreign corporation was engaged was that of a common carrier. But the immunity of interstate commerce is not confined to what is done by the carriers in such commerce. On the contrary, it is universal and covers every class of interstate commerce, including that conducted by merchants and trading companies."

It had previously been held that the vice of the measure of total capital stock could be cured by setting a reasonable maximum to the annual imposition. The highest maximum heretofore considered was $2,500. In General Railway Signal Co. v.

[11] For general articles on the decisions grouped under this head see George E. Hinman, "Legal Phases of State Income Taxation of Miscellaneous Corporations," 3 *Bulletin of the National Tax Association* 41, 67; and T. R. Powell, "Indirect Encroachment on Federal Authority by the Taxing Powers of the States," 31 *Harvard Law Review* 572, 721, 932, "State Excises on Foreign Corporations," *Proceedings of the National Tax Association*, 1918, and "The Changing Law of Foreign Corporations," 33 *Political Science Quarterly* 549.

[12] (1917) 245 U. S. 178. See 3 *Bulletin of the National Tax Association* 99, 18 *Columbia Law Review* 168, and 16 *Michigan Law Review* 264.

[13] (1918) 246 U. S. 135. See 3 *Bulletin of the National Tax Association* 178, 16 *Michigan Law Review* 447, and 27 *Yale Law Journal* 1074.

[14] (1918) 246 U. S. 146.

Virginia,[15] however, the court sanctioned a tax measured roughly by capital stock, which might go as high as $5,000. Weight was attached to the fact that the tax did not ascend *pari passu* with each increase of capital, but corporations were put in classes, as their capital was between ten and twenty, twenty and thirty, million and so on. All corporations with a capital between one and ten million paid $1,000. This was the amount sustained in the case, but the court observed that "it seems proper, however, to add that the case is on the border line." The decision was said to be dependent on all the facts of the case, and the court rendered a rather Scotch verdict by limiting its enthusiasm to the statement that "under all the circumstances we cannot say that this is wholly arbitrary or unreasonable."

Wisconsin income taxes came before the court in two cases, in both of which the taxes were held not to regulate interstate commerce. Northwestern Mutual Life Ins. Co. v. Wisconsin[16] dealt with a tax of three per cent on the gross income of insurance companies, exclusive of income from Wisconsin real estate and from premiums collected outside of Wisconsin on policies on the lives of nonresidents. The tax was in lieu of all other taxation upon personal property. The company alleged that some of this income was from interstate commerce, but the Supreme Court, without passing on the validity of the claim, held that it was not material, as the tax was in the nature of a commutation tax, and was but a method of determining the value of the property within the state.

United States Glue Co. v. Town of Oak Creek[17] sustained the general income tax of Wisconsin which was based, not on gross, but on net income from all sources, including interstate commerce. Such burden as this imposed on interstate commerce was declared to be indirect only, and not to amount to a regulation of that commerce. It was distinguished from a tax measured by gross receipts, in that it did not vary directly with the volume of business, and therefore did not have the tendency to impede or

[15] Note 8, *supra*.
[16] (1918) 247 U. S. 132.
[17] (1918) 247 U. S. 421.

discourage the business that a tax on gross receipts would have. "Such a tax, when imposed on incomes from whatever source arising, is but a method of distributing the cost of government, like a tax upon property, or upon franchises valued as property." It was said to constitute "one of the ordinary and general burdens of government."

This general income tax based on net income is to be contrasted with a special tax on selected occupations measured by gross receipts. Such a tax was held in Crew Levick Co. v. Pennsylvania[18] to constitute a burden on foreign commerce, in so far as it sought to reach receipts from such commerce. The tax in question was said to bear "no semblance of a property tax, or a franchise tax in the proper sense," nor to be "an occupation tax, except as it is imposed upon the very carrying on of the business of exporting merchandise," which chanced to be the business in which the complainant was engaged. This remark of the court seems to be due to the desire to find a way to disregard the earlier case of Ficklen v. Shelby County Taxing District,[19] without confessedly overruling it; but the Ficklen case must probably be regarded as overruled, unless it can be discovered to have involved a tax which was really in lieu of a property tax. That taxes on gross receipts in lieu of all other taxes are applicable even to receipts from interstate commerce was reiterated in Cudahy Packing Co. v. Minnesota.[20]

In sustaining the general income tax of Wisconsin, measured by net income, the court relied on Peck & Co. v. Lowe,[21] decided two weeks earlier, which held that the general federal income tax was not a tax on exports even when the income was the fruit of an exporting business. Here again the court drew the distinction between direct and indirect, immediate and remote effect, and relied on the fact that the tax in question was a gen-

[18] (1917) 245 U. S. 292. See 3 *Bulletin of the National Tax Association* 99, 18 *Columbia Law Review* 483, 31 *Harvard Law Review* 805, and 3 *Southern Law Quarterly* 230.

[19] (1892) 145 U. S. 1.

[20] (1918) 246 U. S. 450.

[21] (1918) 247 U. S. 165. See 87 *Central Law Journal* 4, and 27 *Yale Law Journal* 1096.

eral tax. Whether a general income tax measured by gross receipts, which was not in lieu of all other taxes, could include receipts from sources not directly taxable has not been decided, but the tenor of the opinion in the Wisconsin Income Tax case seems to negative the possibility.

The complaint made against the Virginia license tax on those carrying on a merchandise business, which came before the court in Armour & Co. v. Virginia,[22] was that the exemption of manufacturers selling merchandise at the factory operated to discriminate against interstate commerce. A Virginia manufacturer might use his factory as an emporium without paying the merchants tax to which foreign manufacturers who wished a similar *locus disponendi* within the state would be subjected. But the court held that the alleged discrimination was based on a valid distinction between sales at the factory and elsewhere, and that such disadvantage as foreign manufacturers suffered "was a mere indirect consequence of a lawful and non-discriminatory exercise of state authority," and violated no clause of the federal Constitution.

B. State Police Power and Interstate Commerce

The effect of the Webb-Kenyon Law on state power over intoxicating liquor in interstate transit came before the court again in Seaboard Air Line Ry. v. North Carolina,[23] which sustained a state statute requiring railroad companies to keep a book containing the names of all consignees of liquor shipments, and to permit any citizen to inspect the same. It was urged that, as the state did not prohibit the receipt or possession of liquor, it could not require publicity as to the recipients. But the court affirmed that it had been already held that under the Webb-Kenyon Law "a state may inhibit shipments therein of intoxicating liquors from another by a common carrier although intended for the consignee's personal use where such use

[22] (1918) 246 U. S. 1.

[23] (1917) 245 U. S. 298. See 86 *Central Law Journal* 41, and 31 *Harvard Law Review* 659.

is not actually forbidden." From this it was declared to follow that the state could make the shipment a penal offense, although possession and consumption was not, and that the power to prohibit necessarily includes the lesser power of imposing conditions intended to secure publicity.[24] Mr. Justice Van Devanter dissented, without opinion.

Two efforts of Texas to secure improved transportation service were resisted as interferences with interstate commerce. In Gulf C. & S. F. Ry. Co. v. Texas,[25] a statutory requirement that four trains each way be stopped at county seats, if so many trains were run, was sustained in spite of the interference with interstate commerce resulting from the delay of two interstate trains. The particular county seat in question had a population of only 1,500, and the court seemed to be of the opinion that the order would not be justified by the needs of the local community even though the town would otherwise be without direct sleeping-car service. The controlling factor in the decision was deference to the state's judgment of the needs of county seats. The statutes of the state provided for a penalty not to exceed $5,000 for every failure to obey a lawful order, and the road was fined $22,400, which was $100 for each failure to obey the order in question. This fine was sustained, on the ground that the road had only itself to blame for its sad plight, since it had failed to avail itself of the privilege offered by the state to bring a suit to test the validity of the order. Mr. Justice Holmes remarked, however, that "the case in all its aspects is somewhat extreme," and the Chief Justice and Justices McKenna and McReynolds dissented.

A different fate met the order of the state commission requiring passenger trains within the state to "start from their point of origin and from stations on the line in accordance with advertised schedule, allowing them not to exceed thirty minutes at origin or points of junction with other lines to make connec-

[24] The case seems to go further than Clark Distilling Co. v. Western Maryland Ry. Co., (1915) 242 U. S. 311, and to hold that the Webb-Kenyon Law applies even though the state prohibits neither receipt nor possession. See 2 *Southern Law Quarterly* 118–124.

[25] (1918) 246 U. S. 58.

tion with trains on such other lines, and not exceeding ten minutes more if at the end of thirty minutes the connecting trains were in sight." Missouri, K. & T. Ry. Co. v. Texas[26] held that this order, in so far as it undertook to fix the time allowed for stops in the course of interstate transit, imposed a burden that "not only was serious but was unwarranted as well as unjust." The court was of opinion that the company would not comply with the order by substituting another train for the legally advertised train, but declared that this was hardly practical even if under the order it would excuse the delay of the advertised train.

In International & G. N. Ry. Co. v. Anderson County[27] the court passed adversely on a contention that the observance of a provision in the charter of a railroad corporation, forbidding the removal of its shops and offices from a county which had issued bonds in consideration of such location, imposed a burden on interstate commerce owing to the expansion of the road and the character of its interstate business. The jury at the trial had found that no such burden was in fact imposed. The Supreme Court prefaced its consideration of the contention by saying that "the acceptance of the charter by the plaintiff in error disposed of every constitutional objection but one," thus leaving room for the implication that provisions in corporate charters may come to constitute invalid regulations of interstate commerce—a position that would seem to require the overruling of previously unquestioned adjudications.[28] An explicit decision on the question was rendered unnecessary by the ruling that no burden was imposed. On this point Mr. Justice Holmes observed: "So far as the question depended on the testimony adduced before the jury the verdict must be accepted, and although no doubt there might be cases in which this court would pronounce for itself, irrespective of testimony, whether a burden was imposed, we are not prepared to say that in this instance

[26] (1918) 245 U. S. 484.

[27] (1918) 246 U. S. 424.

[28] See Railroad Co. v. Maryland, (1875) 21 Wall. 456; Ashley v. Ryan, (1894) 153 U. S. 436; and Kansas City, M. & B. R. Co. v. Stiles, (1916) 242 U. S. 111. But see State v. Western & Atlantic R. Co., (1912) 138 Ga. 835, 76 S. E. 77, and note in 26 *Harvard Law Review* 539.

the State has transcended its powers. The burden if any is indirect."

The desire of Massachusetts to regulate the distribution in the state of quotations of the New York Stock Exchange was frustrated by Western Union Telegraph Co. v. Foster[29] on the ground that the distribution was interstate commerce. The state relied on the fact that the quotations, after being received in Boston over interstate wires in the Morse Code, were then translated into the vernacular and distributed to tickers. It appeared, however, that the ultimate recipients of the quotations were determined by the New York Exchange before the message started from that city. The court said that it did not matter that these recipients had no direct contract relations with the New York Exchange, and held that the interstate character of the transmission was not at an end until the information reached its ultimate destination, thus refusing to develop a new sort of original-package rule to apply to such transactions.

Mr. Justice Holmes observed that the character of the intercourse was to be determined by "practice, intent and the typical course," and not by "title or niceties of form," and he declared that "if the normal contemplated and followed course is a transmission as continuous and rapid as science can make it from Exchange to broker's office, it does not matter what are the stages or how little they are secured by covenant or bond." The effort to support the state power on state control over the streets met with the answer that "acts generally lawful may become unlawful when done to accomplish an unlawful end, and a constitutional power cannot be used by way of condition to attain an unconstitutional result."

Constitutional principles were the substratum of two cases[30] which held that, in a prosecution by a state for keeping opium unlawfully, it was error to exclude evidence showing that the acts which detained the opium in the state were incidental to exportation which had been authorized by the treasury department of the federal government, as this bore on the question

[29] (1918) 247 U. S. 105.

[30] McGinnis v. California, (1918) 247 U. S. 91, and Same v. Same, 247 U. S. 95.

whether the goods were in transit when seized. The principle involved is that the state cannot apply its police power to articles which are moving in interstate or foreign commerce as fast as can be reasonably expected.

An echo of the Minnesota rate cases came before the court in Northern Pacific Ry. Co. v. Solum,[31] in which shippers had recovered in the state court the excess of an interstate over an intrastate rate between two points. The state court had declared that it was the duty of the carrier to ship over the shorter and cheaper intrastate route, but the Supreme Court held that this depended upon circumstances which were primarily for judgment of the interstate commerce commission, and that the state court was without authority to adjudicate the controversy until this essentially administrative question had been passed upon by the commission. With reference to the jurisdiction of the commission and the corresponding inhibition on state authorities, it was said curtly that "it is sufficient that one of the routes is interstate." The company's reason for using the interstate route was that the shorter intrastate route had severe grades. It used this route for traffic going in the opposite direction.

II. GOVERNMENTAL RELATIONS BETWEEN THE STATES AND THE UNITED STATES

The familiar principle that the Constitution presupposes the continued existence and effectiveness of both the state and national governments, and that neither government can through the exercise of its powers interfere with the necessary instrumentalities of the other, was relied on in a number of cases, but in none was the principle found to have been violated. Omaechevarria v. Idaho[32] held that the police power of a state may be exercised to arrange priorities of grazing privileges over the public domain of the United States, so long as such provisions con-

[31] (1918) 247 U. S. 477. See 2 *Minnesota Law Review* 339.

[32] (1918) 246 U. S. 343; 31 *Harvard Law Review* 1164. This case is also considered in the section dealing with police power. Justices Van Devanter and McReynolds dissented, but without indicating upon what ground.

flict with no federal statute. Sweet v. Schock[33] and McCurdy v. United States[34] found that the Indian lands with which they respectively had to deal had sufficiently passed from federal control to be subject to state taxation. In Johnson v. Lankford[35] and Martin v. Lankford,[36] two cases growing out of the administration of Oklahoma's depositors' guarantee law, it was held that an action against the state bank commissioner for misfeasance is not a suit against the state, since a state officer may be delinquent without involving the state in delinquency.

A most important issue with respect to the relations between the state and federal governments was raised by the endeavor of Virginia to secure a writ of mandamus compelling the members of the West Virginia legislature to levy a tax to pay a judgment rendered against West Virginia in favor of Virginia. The court left for future determination the question whether the remedy asked for was available to the judgment creditor, but it very definitely rejected West Virginia's contention that the Tenth Amendment prohibited the Supreme Court from ordering a state legislature to exercise the governmental powers of the state.[37] An affirmative answer was given to the question: "May a judgment against a state as a state be enforced against it as such, including the right to the extent necessary for so doing of exerting authority over the governmental powers and agencies possessed by the state?" And the court prefaced its order that the case be restored to the docket for reargument on the question of remedies, by saying: "Accepting the things which are irrevocably foreclosed—briefly stated, the judgment against the state

[33] (1917) 245 U. S. 192.

[34] (1918) 246 U. S. 263.

[35] (1918) 245 U. S. 541. See 86 *Central Law Journal* 285, and 31 *Harvard Law Review* 1036.

[36] (1918) 245 U. S. 547.

[37] Virginia v. West Virginia, (1918) 246 U. S. 565. See T. R. Powell, "Coercing a State to Pay a Judgment," 17 *Michigan Law Review* 1. See also 12 *American Journal of International Law* 619, 31 *Harvard Law Review* 1158, and 16 *Michigan Law Review* 617. For a discussion of the problem written before the decision of the court, see William C. Coleman, "The State as Defendant under the Federal Constitution," 31 *Harvard Law Review* 210.

operating upon it in all its governmental powers and the duty to enforce it viewed in that aspect. . . . ."[38]

III. POLICE POWER

The October term of 1917 is remarkable for the small number of cases involving questions of the police power. During the three preceding terms at least sixty-seven cases[39] passed on police measures either of the states or of Congress, and in nine cases[40] objections were sustained. Against this yearly average of twenty-two cases and annual death rate of three statutes and administrative orders during the preceding triennium, the year 1917–1918 reports only eight cases, with two decisions adverse to the claimed authority. If we exclude from consideration the cases dealing with public utilities, we have to contrast three cases sustaining police statutes with a previous average of twelve, and to note that one statute was declared unconstitutional during the past term and that the average for the three preceding terms was also one.

The most important police measure to come before the court was the Louisville segregation ordinance which forbade migration for residence purposes of persons of color to any block in which a majority of the residents were white, with a similar restriction on white infiltration into colored blocks. This was declared unconstitutional in Buchanan v. Warley,[41] on the ground that it unjustifiably interfered with the rights of property owners to dispose of their property as they saw fit, and therefore took their property rights without due process of law. The

[38] For a case that has some bearing on the question whether the federal government may tax income from state securities and from state salaries, see Peck v. Lowe, page 73 *infra*, note 65.

[39] Of these 67 cases, 39 were concerned with the general police power, and 28 with the control over public utilities.

[40] Six of these involved requirements on carriers.

[41] (1917) 245 U. S. 60. See S. S. Field, "The Constitutionality of Segregation Ordinances," 5 *Virginia Law Review* 81. See also 85 *Central Law Journal* 422, 18 *Columbia Law Review* 147, 3 *Cornell Law Quarterly* 133, 31 *Harvard Law Review* 475, 21 *Law Notes* 162, 16 *Michigan Law Review* 109, 2 *Minnesota Law Review* 57, and 27 *Yale Law Journal* 393.

race question appeared in the opinion only by way of alleged but insufficient justification.

The case before the court was evidently framed for the purpose of testing the constitutionality of the ordinance, as it arose from a bill brought by a white man against a negro for specific performance of a contract to purchase land for a residence in a white district, with a proviso that the purchaser should not be required to accept a deed and make payment unless he had a right under the law to occupy the premises as a residence. On behalf of the ordinance it was urged that it legitimately promoted the public peace and the public welfare by relieving the friction due to race conflicts, but Mr. Justice Day answered this by saying:

"That there exists a serious and difficult problem arising from a feeling of race hostility which the law is powerless to control, and to which it must give a measure of consideration, may freely be admitted. But its solution cannot be promoted by depriving citizens of their constitutional rights and privileges."

The discussion of the cases in which race separation in railway carriages and educational institutions had been sanctioned has some faint flavor of the notion that residential segregation might deny to negroes the equal protection of the laws; but the opinion as a whole zealously guards against putting the decision on any such ground. All that was found evil was the interference with freedom to dispose of city lots. Whether residential race segregation was good or evil was not passed upon, except to declare that it was not sufficiently meritorious to justify a restraint on the alienation of real estate.

The dryest law of any state was sustained in Crane v. Campbell,[42] which held that Idaho had not abridged the privileges and immunities of citizens of the United States, nor deprived persons of liberty without due process of law, by forbidding and penalizing the use or possession of intoxicating liquor. One paragraph of Mr. Justice McReynold's opinion regarded the prohibi-

[42] (1917) 245 U. S. 304. See 52 *American Law Review* 275, 31 *Harvard Law Review* 658, 4 *Iowa Law Bulletin* 116, 16 *Michigan Law Review* 386, 2 *Minnesota Law Review* 232, and 27 *Yale Law Journal* 575.

tion of possession as a proper means of preventing sale or gift. This was premised on "the notorious difficulties always attendant upon efforts to suppress the liquor traffic." The succeeding paragraph, however, said that the undoubted power to forbid manufacture, gift, sale, purchase or transportation necessarily negatived the existence of any constitutional right to possess, since "an assured right of possession would necessarily imply some adequate method to obtain not subject to destruction at the will of the state."

This power to outlaw intoxicating liquor was also the basis of the decision in Eiger v. Garrity[43] which upheld an Illinois statute making a judgment against a liquor dealer for loss to dependents of his customers, by reason of his ministrations, a lien upon the premises in which the liquor was sold, provided the owner thereof knew of the use to which the premises were put. The landlord whose building was subjected to the liability in suit complained particularly that he was given no opportunity to be heard in the action against the saloon keeper in which the right of recovery was adjudicated and the *quantum* of damages assessed. But the court replied that he might protect himself by selecting his tenant and by fixing the amount of rent and in other ways, and that the statute in effect made the tenant the agent of the landlord. The owner's rights were said to be sufficiently guarded by allowing him to "be heard to deny the rendition of the judgment against the tenant, the making of the lease authorizing the sale of intoxicating liquor, or, if his knowledge of such use be the issue, he may be heard on that question."

From an Idaho sheep owner came the complaint that a statute prohibiting any person having charge of sheep from allowing them to graze on a range on the public domain previously occupied by cattle violated the Fourteenth Amendment by denying to sheep owners the equal protection of the laws and abridging their privileges as citizens of the United States. But Omaechevarria v. Idaho[44] held the complaint without merit, finding that

[43] (1918) 246 U. S. 88. See 86 *Central Law Journal* 313, and 27 *Yale Law Journal* 850.

[44] Note 32, *supra*.

under the circumstances cattle required a protection against encroachment by sheep that sheep did not need against cattle, since sheep would graze with cattle but cattle would not graze with sheep. Segregation was necessary, and, in view of the situation in the state, the adjustment made was regarded as fair to the interests of both groups of stock owners. Justices Van Devanter and McReynolds dissented, but whether on the due-process point or on the decision that the state had not trespassed on federal authority does not appear.

Five cases involved that branch of the police power which controls the activities of public-utility enterprises. Pennsylvania R. Co. v. Towers[45] held that where a railroad company has already established commutation rates for suburban service, the state may regulate such rates within the limit of reasonableness, and fix them below those charged for regular service, since the service to commuters is of a special character differing from general passenger service. Great Northern Ry. Co. v. Minnesota[46] sanctioned a requirement that a railroad company construct across its right of way a suitable sidewalk to connect with and correspond to the walk on the abutting property. Chicago, M. & St. P. Ry. Co. v. Minneapolis Civic Association[47] sustained an order forbidding two railroads which owned and controlled a corporation having nominally independent terminal facilities from adding to long-haul rates an additional charge for switching over the terminal railroad, when no such charge was made for exactly similar service over the other terminals in the city operated and owned by the roads. The separate terminal corporation was found to be nothing but a facility used by the two roads jointly in the same way that they used their other separate terminals, and the court looked behind the corporate entity and found merely a device by which discrimination was accomplished.

The other two cases dealt with the reasonableness of rates. Manufacturers' Ry. v. United States[48] involved no novel ques-

[45] (1917) 245 U. S. 6. See 85 *Central Law Journal* 331, 18 *Columbia Law Review* 155, 16 *Michigan Law Review* 124, and 27 *Yale Law Journal* 404.

[46] (1918) 246 U. S. 434.

[47] (1918) 247 U. S. 490.

[48] (1918) 246 U. S. 457.

tion of law, but was concerned with somewhat complicated computations which were found to justify an order of the interstate commerce commission fixing rates for the use of terminal facilities. In Denver v. Denver Union Water Co.,[49] however, a most interesting and important question of law was raised. Whether the question was technically decided admits of doubt, owing to the dispute between the majority and the minority as to the proper interpretation of the ordinance complained of.

The city of Denver and the Denver Water Company had been haggling for some years over the purchase of the latter by the former, and had come to no agreement. Meanwhile the company's formal franchise had expired. The city thereupon passed the ordinance in question, prescribing certain rates and prefacing its requirement by a declaration that the company "is without a franchise and a mere tenant by sufferance of the streets." In view of this, Mr. Justice Holmes contended for the minority, consisting of himself and Justices Brandeis and Clarke, that the company's property should be valued at no more than what it would bring for other uses. Mr. Justice Pitney, however, speaking for the majority, insisted that the ordinance prescribing rates recognized a duty to continue the service and impliedly granted "a new franchise of indefinite duration, terminable by the city or by the company at such time and under such circumstances as may be consistent with the duty that both owe to the inhabitants of Denver." The property therefore must be valued as property in use, and not as junk. The majority opinion would have been stronger if it had omitted the argument that "the cost and detriment to a property owner attributable to the use of his property by the public . . . . are measured day by day, month by month, year by year, and are little influenced by the question how long the service is to continue." This neglects the fact that the plant would sell for considerably less than it would cost to reproduce it, on account of the power of the city to erect a new plant and to forbid the use of the old.

[49] (1918) 246 U. S. 178. See 31 *Harvard Law Review* 1036, 16 *Michigan Law Review* 438, and 27 *Yale Law Journal* 1095.

This is the point of Mr. Justice Holmes's query "how a company in that situation can assert a constitutional right to a return upon the value those pipes would have if there under a permanent right of occupation, as against a city that is legally entitled to reduce them to their value as old iron by ordering them to be removed at once." This being the legal situation, Mr. Justice Holmes brought to bear the argument that, as the company "could be stopped by the city out and out, the general principle is that it could be stopped unless a certain price is paid." He recognizes, however, that "this principle has not been applied in cases where the condition tended to bring about a state of things that there was a predominant public interest to prevent," but he finds no such predominant public interest here.

The possibility of exceptions to the rule relied on by the minority indicates plainly that the determining issue in each case must be one of policy. Mr. Justice Holmes seems to recognize a difficulty in his position when he remarks that "it may be said that to argue from such abstract rights is to discuss the case in vacuo—that practically the company cannot stop furnishing water without being ruined, or the city stop receiving it without being destroyed." This he concedes to be true, but he answers that "it also is true and not quite so tautologous as it seems, that the law knows nothing but legal rights," and that "the mutual dependence of the parties upon each other in fact does not affect the consequences of their independence of each other in law."

The solution of the difficulty seems to be that the city must go far enough in constructing a new plant to convince the water company that it is in earnest. Then a bargain may be made that will satisfy the city, whether it pleases the company or not. It is a pity that legal principles do not afford some way of compromise that can adjust such differences without sending the contestants back to their haggling.

IV. TAXATION

The cases previously referred to,[50] holding that excises on foreign corporations measured by total capital stock were invalid regulations of interstate commerce, declared also that the taxes took property without due process of law because in effect they fell on property outside the jurisdiction. Whether the same condemnation under the Fourteenth Amendment would be visited on similar taxes on foreign corporations not engaged in interstate commerce remains to be seen. The issue will depend upon whether the court is still of its ancient opinion that over such corporations the state holds a complete and arbitrary power to exclude or eject, which justifies any lesser burdens that may be concocted. An analogous view still obtains with respect to domestic corporations, but there is rather strong evidence that the court plans to abandon the notion of arbitrary power over any foreign corporation, whether engaged in interstate commerce or not.

In International Paper Co. v. Massachusetts,[51] Mr. Justice Van Devanter stated as a distinct proposition that "consistently with the due process clause, a State cannot tax property belonging to a foreign corporation and neither located nor used within the confines of the State." A tax measured by total capital stock was said to be on the entire property of a corporation, notwithstanding the fact that it is "declared by the State imposing it to be merely a charge for the privilege of conducting local business therein." This statement had reference to foreign corporations "doing both a local and interstate business in several states," but no reference to the kind of business in which a corporation was engaged was included in the earlier statement that the power of the state over foreign corporations "is not unrestricted or absolute, but must be exerted in subordination to the limitations which the Constitution places on state action."

[50] Cited in notes 12, 13 and 14, *supra*.
[51] Note 13, *supra*.

In Cheney Brothers Co. v. Massachusetts[52] one of the complaining corporations contended that it was denied the equal protection of the laws because it was taxed more heavily than similar domestic corporations. In Northwestern Mutual Life Ins. Co. v. Wisconsin[53] a domestic corporation complained of a like discrimination in favor of foreign corporations. Both complainants relied unsuccessfully on Southern Railway Co. v. Greene,[54] which had held in 1910 that a foreign railroad corporation which had acquired in the state a large amount of property of a permanent character had thereby become "a person within the jurisdiction" and could object to increases of taxation not suffered by domestic corporations similarly situated. In distinguishing the Greene case, the opinions of the court indicated that the doctrine is confined to corporations whose property is of a kind not readily susceptible of other uses, and that such corporations can object only to discriminatory increases.

Another complaint against discrimination alleged to be a violation of the equal-protection clause was rejected in Sunday Lake Iron Co. v. Wakefield.[55] It was evident that in the year 1911 the company's property had been assessed at its full value, while other property in the township and county was generally assessed at not more than a third of its true worth. This relative overassessment was thought by the victim to bring the situation within an earlier decision[56] which established, as the court recognized, that "intentional, systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property." But the court found that in the case at bar the injustice was due to an honest inadvertence, had not occurred before or since, and therefore came within the rule that mere errors of judgment will not support a claim of unconstitutional discrimination.

[52] Note 10, *supra*.
[53] Note 16, *supra*.
[54] (1910) 216 U. S. 400.
[55] (1918) 247 U. S. 350.
[56] Raymond v. Chicago Union Traction Co., (1907) 207 U. S. 20.

Readers of the review of decisions for the three preceding years may recall the assessment of benefits for street paving by a method that Mr. Justice Holmes called "a farrago of irrational irregularities throughout."[57] The state court, in interpreting the mandate of the Supreme Court, sustained the one-fourth part of the tax assessed according to foot frontage, but declined to make a new assessment of the three-fourths' part unconstitutionally apportioned. The quarrel came to the Supreme Court again in Schneider Granite Co. v. Gast Realty & Investment Co.,[58] which sustained the state court in both its rulings, but pointed out that nothing in the federal Constitution prevented a new assessment in substitution for the one declared invalid. But whether it should be made, and, if so, whether by the state court or by some other authority, were said to be matters of state law with which the Supreme Court was not concerned.

The situs for taxation of intangibles, which has been a fruitful source of litigation, came before the court again in Fidelity & Columbia Trust Co. v. Louisville[59] in which all the court but the Chief Justice agreed that bank deposits in Missouri were taxable to their owner at his domicile in Kentucky. The statement of the case included the information that the deposits were not used by the owner in his Missouri business, but belonged absolutely to him; but this element was not mentioned in the opinion. The Kentucky tax was said to be one upon the person, "imposed, it may be presumed for the general advantages of living within the jurisdiction," and it was observed that "these advantages, if the State so chooses, may be measured more or less by reference to the riches of the person taxed." Neverthe-

[57] See 12 *American Political Science Review* 451.

[58] (1917) 245 U. S. 288.

[59] (1917) 245 U. S. 54. See 3 *Bulletin of the National Tax Association* 77, 85 *Central Law Journal* 441, 31 *Harvard Law Review* 786, 62 *Ohio Law Bulletin* 533, and 3 *Virginia Law Register* n. s. 775. On the general subject, see Charles E. Carpenter, "Jurisdiction over Debts for the Purpose of Administration, Garnishment, and Taxation," 31 *Harvard Law Review* 905. Mr. Carpenter does not mention the principal case, although it was discussed in a note in the *Harvard Law Review* two issues before the publication of his article.

less it was later declared that "it is unnecessary to consider whether the distinction between a tax measured by certain property and a tax on that property could be invoked in a case like the present," because, "whichever this tax technically may be, the authorities show that it must be sustained." It was assumed that the deposits were taxable also in Missouri, but Mr. Justice Holmes observed that "liability to taxation in one State does not necessarily exclude liability in another," and the rules of jurisdiction over chattels were declared not to extend to intangibles.

That the taxing power may be used to raise funds to establish a municipal wood yard to sell fuel without profit was decided in Jones v. Portland.[60] The court recognized fully that the Fourteenth Amendment prevents the use of the taxing power for any but a public purpose, and that the Supreme Court must decide what purposes are public, but it observed that the test may vary with local conditions and that the judgments of state legislatures and state courts must be given great weight. While much of Mr. Justice Day's opinion seemed to rest the decision chiefly on the approving opinion of the state court, reference was made to a decision of another state court sanctioning the use of taxation to establish a municipal heating-plant, and it was said that "we see no reason why the state may not, if it sees fit to do so, authorize a municipality to furnish heat by such means as are necessary and such systems as are proper for its distribution."

The federal income tax of 1913 brought eleven cases to the Supreme Court, but only three of them proceeded on constitutional grounds. Lynch v. Hornby[61] held that cash dividends paid to stockholders after the effective date of the statute were taxable to them as income, although they came from a surplus accumulated by the corporation before the enactment of the

[60] (1917) 245 U. S. 217. See C. C. Maxey, "Is Government Merchandising Constitutional?" 52 *American Law Review* 215. See also 86 *Central Law Journal* 21, 3 *Cornell Law Quarterly* 287, 16 *Michigan Law Review* 263, 46 *Washington Law Reporter* 202, and 27 *Yale Law Journal* 824.

[61] (1918) 247 U. S. 339.

Sixteenth Amendment. Peabody v. Eisner[62] applied the same doctrine to a distribution among stockholders of stocks of other than the distributing corporation. Such a distribution was held to constitute income of the stockholders, in contradistinction to a stock dividend of extra shares in the corporation of which they are members. Such stock dividends were regarded in Towne v. Eisner[63] as not income to the stockholder but as scraps of paper rearranging the indicia of his interest in the corporate assets.

This decision was carefully confined to the interpretation of the word "income" as contained in the act of Congress,[64] leaving it still to be determined whether stock dividends can be regarded as "income" within the meaning of the Sixteenth Amendment. On this point Mr. Justice Holmes remarked: "But it is not necessarily true that income means the same thing in the Constitution and the Act. A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used." Later statutes of Congress will make it necessary to determine whether the Sixteenth Amendment authorizes the taxing of stock dividends as "income." What is already established is that, if a stockholder gets what to him is income after the effective date of the Amendment and the statute,

[62] (1918) 247 U. S. 347.

[63] (1918) 245 U. S. 418. See F. R. Fairchild, "The Economic Nature of the Stock Dividend," 3 *Bulletin of the National Tax Association* 162. See also 86 *Central Law Journal* 104, 18 *Columbia Law Review* 63, 31 *Harvard Law Review* 787, 805, 2 *Minnesota Law Review* 284, 3 *Southern Law Quarterly* 67, and 27 *Yale Law Journal* 553.

[64] Among other interpretations put upon the meaning of the word "income" as contained in the statute were the decisions that it does not embrace alimony (Gould v. Gould, 1917, 245 U. S. 151) nor a transfer of assets from one corporation to another which is the sole owner of the transferring corporation (Southern Pacific Co. v. Lowe, 1918, 247 U. S. 330) nor a sum received by a stockholder in excess of the par value of his stock on the dissolution of the corporation, where such excess was due to increases in value during a long period before the effective date of the statute, which increase had reached its height before the act became effective (Lynch v. Turrish, 1918, 247 U. S. 221). Various accounting problems raised by the application of the statute were passed upon in Doyle v. Mitchell Bros. Co., 247 U. S. 179, Goldfield Consolidated Mines Co. v. Scott, 247 U. S. 126, Hays v. Gauley Mountain Coal Co., 247 U. S. 189, and United States v. Biwabik Mining Co., 247 U. S. 116, all decided in 1918.

that income has no immunity because its economic origins antedated the Sixteenth Amendment.

The third decision on constitutional questions presented by the federal income tax is Peck & Co. v. Lowe,[65] already referred to, which held that a tax on net income from an exportation business is not a "tax or duty on articles exported from any state." In support of the decision Mr. Justice Van Devanter declared: "At most, exportation is affected only indirectly and remotely. The tax is levied after exportation is completed, after all expenses are paid and losses adjusted, and after the recipient of the income is free to use it as he chooses."

From the standpoint of the bearing of this decision on the question whether Congress may now tax the income from state and municipal bonds, note must be taken of the following extract from the opinion:

"The Sixteenth Amendment, although referred to in argument, has no real bearing and may be put out of view. As pointed out in recent decisions, it does not extend the taxing power to any new or excepted subjects, but merely removes all occasion, which otherwise might exist, for an apportionment among the states of taxes laid on income, whether it be derived from one source or another."

This reiterates that the words "from whatever source derived" which are contained in the Sixteenth Amendment confer no authority to tax income from state securities. The only bearing, then, of Peck & Co. v. Lowe upon that question lies in the possibility that a tax on the entire net income of an individual might possibly now be regarded as having only an indirect effect on such income as he might derive from the treasury of a state or municipality by way of salary or interest. This possibility, however, must be deemed somewhat remote, for there are few, if any, deductions to be made from the gross income from such sources before the taxable net income is derived, as there are from the gross income from an exporting business. The importance of the distinction between gross and net income was em-

[65] Note 21, *supra*.

phasized in United States Glue Co. v. Town of Oak Creek,[66] previously considered.

V. EMINENT DOMAIN

In McCoy v. Union Elevated R. Co.,[67] a hotel owner, who felt aggrieved because he recovered in the state court no damages for injuries claimed to be due to the erection of an elevated railroad in the street in front of his premises, asked the Supreme Court to hold that he had thereby been deprived of property without due process of law. The nub of the controversy was whether the road was entitled to deduct from the damages caused such benefits as the road conferred, even though those benefits were not peculiar to the plaintiff but were similar to what his neighbors also enjoyed from the increase of travel by their doors. The Supreme Court, in holding that general benefits need not be deducted, declared that all that the Fourteenth Amendment required was that just compensation be given for the damage, and that there was no guaranty that a person "shall derive a positive pecuniary advantage from a public work whenever a neighbor does."

Sears v. Akron[68] reiterated the familiar doctrine that, while the question whether the purpose for which land is taken by eminent domain is a public purpose can be settled finally only by the judiciary, the necessity for the taking and the extent of land to be taken are matters of legislative discretion, and that a state does not deny due process by affording owners no opportunity to be heard with respect to such necessity and extent. In this case the taking was by a city, which determined for itself, under legislative authorization, how much land it required for a municipal water project.

In Pennsylvania Hospital v. Philadelphia[69] it appeared that a city which had agreed for a consideration not to exercise the right

[66] Note 17, *supra*.

[67] (1918) 247 U. S. 354.

[68] (1918) 246 U. S. 242.

[69] (1917) 245 U. S. 20. See 2 *Minnesota Law Review* 373, and 3 *Virginia Law Register* n. s. 777.

of eminent domain through the grounds of a hospital, later proceeded to do so. "As the result of proceedings in the state court the purpose of the city was so shaped as to cause it to seek to take under the right of eminent domain, not only the land desired for the street, but the rights under the contract" not to use the power of eminent domain. The Supreme Court sustained the taking, but implied that the contract not to take in no way affected the situation, since it was initially void because the power of eminent domain could not be contracted away. The opinion of the Chief Justice is interesting for the statement that "if the possibility were to be conceded that power existed to restrain by contract the further exercise by the government of its right to exert eminent domain, it would be unthinkable that the existence of such right of contract could be rendered unavailing by directing proceedings in eminent domain against the contract, for this would be a mere evasion of the assumed power." This of course does not prevent a state court from taking a different view, since it may recognize as contracts what the federal Constitution would not require it to recognize, and may award damages for takings by eminent domain in excess of what the Supreme Court would require.

VI. COMPULSORY MILITARY SERVICE

If any genuine doubts existed as to whether the Supreme Court would sustain the Selective Service Law, they were effectively dispelled by the opinion of the Chief Justice in the Selective Draft Law Cases.[70] The argument that "compulsory military

[70] (1918) 245 U. S. 366. The "Selective Draft Law Cases" is the title given by the official reporter to Arver v. United States and five other cases decided in the same opinion. See 24 *Case and Comment* 821, 6 *California Law Review* 222, 4 *Iowa Law Bulletin* 122, 16 *Michigan Law Review* 376, and 27 *Yale Law Journal* 575.

For other cases involving interpretations or applications of the Selective Draft Law, see Jones v. Perkins, 245 U. S. 390; Goldman v. United States, 245 U. S. 474; Ruthenberg v. United States, 245 U. S. 480; and Kramer v. United States, 245 U. S. 478, all decided in 1918. In the Kramer case the contention was raised that the indictment was defective in that it did not state that the defendant who had failed to register was a citizen of the United States or a person not an enemy alien who had declared his intention to become such a citizen. The contention

service is repugnant to a free government" was said to be based on a premise "so devoid of foundation that it leaves not even a shadow of ground on which to base the conclusion," since "it may not be doubted that the very conception of a just government and its duty to the citizen includes the reciprocal obligation of the citizen to render military service in case of need and the right to compel it." The contention that compulsory military service imposed involuntary servitude was similarly disposed of in the concluding paragraph of the opinion, in which it was said:

"Finally, as we are unable to conceive upon what theory the exaction by government from the citizen of the performance of his supreme and noble duty of contributing to the defense of the rights and honor of the nation, as a result of a war declared by the great representative body of the people, can be said to be the imposition of involuntary servitude in violation of the prohibitions of the Thirteenth Amendment, we are constrained to the conclusion that the contention to that effect is refuted by its mere statement."

More distinctly legal consideration was given to the objection that Congress was not vested with the power exercised. It was pointed out that the provision of the Constitution relating to congressional power over the militia was entirely distinct from that giving power to raise and support armies, and that the limitations surrounding the exercise of the former had therefore no application to the use of the latter. To attempt to limit the power to raise armies to raising them by invitation was said to challenge the existence of all power, "for a governmental power which has no sanction to it and which therefore can only be exercised provided the citizen consents to its exertion is in no substantial sense a power."

The argument that at the time of the adoption of the Constitution national citizenship was derivative from state citizenship

was held unfounded in view of the fact that all persons between the designated ages were required to register under the law and it was stated that the defendant was between the designated ages, thus holding that those not liable to service may still be required to register.

and that therefore Congress could not so exercise its power to raise armies as to cause national citizenship "to lose its dependent character and to dominate state citizenship" was said to deny to Congress the power to raise armies which the Constitution confers. "That power by the very terms of the Constitution, being delegated, is supreme." And to this was added that the Fourteenth Amendment, which completely "broadened the national scope of the Government under the Constitution by causing citizenship of the United States to be paramount and dominant instead of being subordinate and derivative, and therefore, operating as it does upon all the powers conferred by the Constitution, leaves no possible support for the contentions made, if their want of merit was not otherwise so clearly made manifest."

The administrative provisions of the act were likewise found to be free from fault. The contention that the exemption of ministers and theological students was either an establishment of religion or a prevention of the free exercise thereof was found possessed of an unsoundness so apparent that it was not necessary to do more than state it. The alleged vesting in administrative officers of legislative and judicial power was found to be effectively disposed of by previous decisions. And it was declared that "the contention that the act is void as a delegation of federal power to state officials because of its administrative features is too wanting in merit to require further notice." Here perhaps one might have wished for fuller consideration, in view of the bearing of the question on other possible efforts at coöperation between the national and state governments.

In Cox v. Wood,[71] decided four months later, the claim that a person subject to the draft was entitled to be discharged because the call was for service in a foreign country was dismissed as not entitled to original consideration, since it had been effectively disposed of by what had been said in the Selective Draft Law Cases. All the arguments advanced in support of the claim were found to rest upon the erroneous confusion of the power over the militia with the power to raise and support armies.

(To be concluded.)

[71] (1918) 247 U. S. 3.

The November Elections. The most noteworthy results of the thirty state elections in November were the reëlection of Governor Cox (Democrat) in Ohio and the apparent election of Senator Alfred E. Smith (Democrat) in New York. Although the statewide prohibition amendment was adopted in Ohio by a majority not far from 15,000, Governor Cox, the candidate of the "wet" interests, defeated ex-Governor Willis (Republican), the "dry" candidate, by about 10,000 majority. Willis' defeat is attributed chiefly to his alleged pro-German utterances before the war. Governor Cox was the only Democratic state officer reëlected, the Democratic state auditor holding over for two years more.

In New York on the face of the returns, Senator Smith had a plurality around 12,000. For Governor Whitman's defeat, the following reasons have been advanced: the exceptionally high standing of the Democratic candidate both in point of ability and personal character and popularity, reënforced by the resources and united support of Tammany; the poorly concealed hostility of the "Old Guard" or Barnes-Wadsworth faction, in combination with the "wet" interests who were displeased with the governor's friendliness toward the federal prohibition amendment and his indorsement by the Prohibition party; the widespread feeling that the governor had neglected his official duties and perverted his office in order to promote his prospects for winning the presidential nomination in 1920; and the disaffection of influential agricultural organizations which hitherto have been stanch supporters of the Republican administration. The only other successful Democrat on the state ticket was the candidate for lieutenant governor. The legislature has a Republican majority in both houses, and for the first time two women have been elected to the assembly. Under a recent noteworthy amendment to the New York election laws, a fresh set of election officers went on duty as soon as the polls closed in order to relieve the polling officials who had been on duty all day of the arduous task of counting the ballots and making the returns. The innovation is reported to have worked well, and apparently deserves to be widely copied.

For the first time in New York history, women participated in a general election on a footing of equality with male voters. In New York City nearly half a million women took the trouble to register, and in the state as a whole it is estimated that not far from a million women qualified as voters. Full suffrage for women was adopted in Michigan and in South Dakota. In Oklahoma there was a large majority in favor of full suffrage; but the constitution requires a majority of the total vote cast at the election, and, according to the secretary of state, there has been some uncertainty as to what constituted the total vote, although indications are that the measure has been adopted. Woman suffrage was defeated in Florida, and also in Louisiana by the New Orleans vote, although a majority of the voters outside the city seem to have favored the suffrage amendment.

The attitude of legislative candidates toward the federal prohibition amendment played an important, though not very conspicuous, part in many of the state elections. Although complete data on this point is not at hand, it appears certain that several of the newly elected legislatures will ratify the federal amendment; and it appears safe to include in this forecast California, Colorado, Illinois, Ohio, New York and Vermont. The last state, like Ohio, elected on the same day a "wet" governor and a "dry" legislature. Statewide prohibition amendments were adopted in Florida, Nevada, Ohio, Wyoming, and were defeated in California, Missouri, and in Minnesota by only 756 votes. Although prohibition won in Ohio, the "wets" were successful in carrying a unique constitutional amendment reserving to the people the power to approve or reject an action of the general assembly "*ratifying* any proposed amendment to the constitution of the United States." If the "wets" invoke such a referendum after ratification of the federal prohibition amendment, as seems to be their intention, some interesting questions of constitutional law are likely to be raised.

Nineteen constitutional amendments, submitted by the constitutional convention, were approved by the voters of Massachusetts. Most important among these were the amendments providing for a restricted form of the initiative and referendum, biennial state elections to begin in 1920, and empowering the legislature to enact a compulsory voting law. North Dakota is believed to be the only other state with such a constitutional provision as the last named, but no legislation has been enacted under it.

Despite obstacles rendering it difficult if not impossible for voters absent with the American expeditionary forces in Europe to take ad-

vantage of the absent-voting laws enacted by a large number of states, it appears that a good many thousand soldiers voted in the various cantonments in this country. An investigation of the operation of both civilian and military absent-voting laws in this election might furnish material for an interesting study.

Until ten days before the election, the congressional campaign was extraordinarily dull and lifeless, due in part to popular interest in the war, the liberty loan campaign, the influenza epidemic, and to the absence of any outstanding issue between the two leading parties. In the house elections there was a total of 51 party changes, in which the Republicans gained 38 seats (mainly in the middle-west) and the Democrats 13 (mainly in the east).[1]

In the senatorial contests the Democrats lost seats in Colorado, Delaware, Illinois, Kansas, Missouri and New Jersey. In Massachusetts ex-Governor Walsh (Democrat) defeated Senator Weeks, the first time that a Democrat has been elected to the senate from that state since Robert Rantoul was elected in 1850. This Democratic success in New England was offset by the Republican success in Missouri, where Judge S. P. Spencer defeated ex-Governor John W. Folk.

As a result of these changes, the next Congress will comprise in the house 238 Republicans, 193 Democrats, 2 independents, 1 Socialist, and 1 Prohibitionist, giving the Republicans a clear majority of 41; in the senate the party division will be 49 Republicans and 47 Democrats, a Republican majority of 2 replacing the present Democratic majority of 8.

This party overturn is in reality less impressive than might be inferred from the size of the Republican house majority. In no section of the country, unless Ohio and Kansas may be regarded as exceptions,

[1]These figures are based upon the "Unofficial List" of members of the 66th Congress, compiled by the clerk of the house, dated November 14. A few seats are likely to be contested.

The Republican gains were distributed as follows: six in Ohio, four in Indiana and Kansas, three in New York, Pennsylvania, Missouri and Nebraska, two in Colorado, and one in California, Delaware, Illinois, Kentucky, Maryland, Michigan, New Mexico, Rhode Island, Washington and West Virginia. The Democratic gains were made in the following states: five in New York, three in New Jersey, two in Pennsylvania, and one in California, Nevada, and Oklahoma.

The large Democratic gain in New York was partly due to the fusion between Republicans and Democrats in certain New York City districts in order to prevent the election of Socialist candidates.

occurred anything which may fairly be called a Republican landslide, and the Democratic mortality does not appear to be far from the normal expectancy for the party in power in an "off-year" election.

To produce this party change in the control of Congress so many factors contributed in such varying degrees and combinations in different sections as to preclude the confident offering of any simple formula by way of explanation. Insufficient data is at hand to warrant even a very satisfactory tentative appraisal of the various factors. They may be indicated, however, and some suggestion made respecting their possible influence. In the enumeration which follows, the less important factors or those whose influence seems to have been confined to relatively small areas will be noted first.

(1) Resentment at the treatment accorded by the administration to General Leonard Wood, in command at Camp Funston, has been mentioned as not without its influence in Kansas and possibly other states.

(2) Opposition on the part of influential publishers organizations to the enactment of the postal zone law was an inconspicuous factor, but one which, in the opinion of an important official in such organizations, assisted in the defeat of 59 congressmen.

(3) The Socialist party seems to have been a factor of only negative importance. Fear of its possible success had much to do with the fusion of Republicans and Democrats in certain New York City districts. The Socialist congressional candidates in twelve Manhattan districts were all defeated, including Meyer London, the only Socialist in the present Congress, and Morris Hillquit who ran for mayor of New York in 1917. Victor Berger of Milwaukee will be the only Socialist in the 66th Congress.

(4) The Non-Partisan League was undoubtedly a factor of importance in state elections, and apparently also in congressional elections in North Dakota, Montana, Minnesota, Nebraska, and perhaps in other states. In spite of the charges of disloyalty which have been preferred against some of the officials of the league, its influence does not appear to be growing less, at least not in North Dakota, the state of its earliest successes.

(5) Woman suffrage organizations were active in several senatorial contests, but it is difficult to find justification for the claim that the general result of the election is a strong rebuke to the Democratic party for its treatment of the federal suffrage amendment. The opposition of the suffragists seems to have contributed in some measure to the defeat of Senator Weeks (Republican) in Massachusetts and Senator

Saulsbury (Democrat) in Delaware, both of whom had opposed the federal amendment. Suffragist opposition to the reëlection of Senators Baird of New Jersey (Republican) and Borah of Idaho (Republican) and to the election of Mr. Moses (Republican) in New Hampshire, whose position was doubtful, apparently caused these candidates to run behind their party tickets. At the same time new senators favorable to the suffrage amendment were elected in South Carolina, Kentucky and New Jersey.

(6) The voting record of congressional candidates for reëlection, on the principal preparedness and war measures in the 64th Congress and two such measures in the 65th Congress, figured prominently in many districts, including at least three Iowa districts where unsuccessful efforts were made to defeat the present Republican members of the house on the ground that they had not supported all the war measures. The work of the National Security League deserves mention in this connection. The league circulated widely a chart showing the voting records of members of the house on preparedness and war legislation. On the league's "Roll of Honor," which included the names of those who had voted "right" on all eight test measures, were 47 names, of whom 43 were Republicans and 4 were Democrats; 7 of these were not renominated, 3 were defeated and 37 were elected. Of the 117 candidates who voted "wrong" on from five to eight of the test measures in both Congresses, 24 were not renominated, 79 were elected, of whom 53 came from the South, and 14 were defeated. Of the 20 members of the 65th Congress only, who voted "wrong" on the two measures coming before that Congress, 7 were not renominated, 10 were elected, of whom 5 were from the South, and 3 were defeated.

(7) Resentment at congressional price-fixing for wheat was clearly a factor in Kansas, and probably in other wheat-producing states. This legislation was associated in the public mind with Southern influence in Congress which prevented price-fixing legislation for cotton, and with the operation of the seniority rule in house committee assignments whereby Southern representatives who held more or less pronounced pacifist views were at the head of important committees. Republican gains were mainly in the rural districts of the middle-west.

(8) Taxation is never relished, and the policy of imposing heavy war taxes inevitably incurred opposition. To this was added charges of sectionalism in the revenue measures. The indiscreet declaration of the Southern chairman of the committee on ways and means to the ef-

fect that the North having forced the country into the war should pay the bill, was given wide circulation by the Republican press and leaders, and it probably had something, and in the opinion of the New York *Times* had much, to do with the Democratic defeat. Mention may also be made of the wide dissatisfaction in business circles with the present Congress for its dilatoriness during the last session in preparing the new war revenue act, a circumstance which led one of the most loyal of administration newspapers to characterize Congress as "our one great slacker."

(9) Presidential influence was openly exerted in the congressional primaries and elections to defeat Democratic senators and representatives who had voted against administration measures or who had been more or less outspoken in their criticisms of administrative policies. Apparently in large measure as a result of executive condemnation, ex-Governor Blease of South Carolina, running for the senatorial nomination, and Senators Vardaman of Mississippi and Hardwick of Georgia, and also Representatives McLemore and Slayton of Texas were defeated in the primaries. On the other hand, Representative Huddleston of Alabama won renomination and reëlection in spite of executive opposition vigorously expressed. The President likewise actively but unsuccessfully intervened in behalf of Democratic senatorial candidates in Rhode Island, New Jersey, New Mexico and Michigan. In other states senatorial candidates appealed for support on the ground that they were loyal administration men, notably in Illinois and Missouri, and in the absence of any executive disavowal, the public inferred that they were administration candidates. The President indorsed the reelection of Senator Nelson (Republican) from Minnesota, and no Democratic candidate was formally nominated in that state.

The foregoing enumeration is believed to include the principal factors in the campaign until shortly before the election. Taken singly, or even in certain possible combinations, they hardly account for the party overturn either in Congress as a whole or in more than a few states and districts. In the aggregate there was a good deal of dissatisfaction with the record of Congress and with some actions of the administration; but it was widely diffused and generally uncrystallized. The administration had been in the main accorded loyal support by Republican as well as Democratic party leaders, while among the rank and file party lines had become indistinct. Even the President's activity in particular cases in the primaries and elections provoked little more than local

resentment, for the public has come to regard such action as a defensible exercise of the President's functions as a party leader. Such seemed to be the state of the public mind that thousands of more or less dissatisfied voters might have allowed the election to go by default or have voted for Democratic candidates.

But new factors entered during the last few weeks of the campaign. The correspondence with the German government was openly criticized, and as the prospects for peace developed it became more evident that the President could not count on the same degree of united support for the problems of peace and reconstruction as for the conduct of the war. Under these circumstances the President issued a frank appeal for the election of a Democratic Congress, in order to maintain unity of action in the government.

This appeal had the immediate effect of arousing the open antagonism of Republican leaders, dispelled the apathy which had characterized the campaign up to that time, and tended to stiffen party lines and to arouse party zeal and enthusiasm. To some it has seemed the main factor in crystallizing the latent elements of dissatisfaction, and in repelling Republican and independent voters who were hesitating as to the course they should follow. It appears that, at least in some sections, Democratic managers regarded the President's action as a liability rather than an asset.

On the other hand it has been argued that the President's appeal served to prevent a still more serious defeat for his party. Reference was made to similar appeals by Republicans, as in the campaign of 1898 and Lincoln's adage about swapping horses, in the campaign of 1864. As between these conflicting interpretations it is difficult, if not impossible, to make a clear decision. But the sectional distribution of party gains and losses indicates that local rather than general factors were of most importance in the result.

If any single generalization seems justified, the result of the election should be regarded less as a Republican victory than as a rebuke to the Democratic party. It is certain that the Republicans have received no mandate to engage in merely destructive criticism or obstructive tactics toward administration measures, and the party has yet to develop an effective leadership or constructive program of its own for the problems to be faced.

The Republican party will be on probation for the next two years. Its first real opportunity to serve the nation and incidentally itself—

an opportunity which is at once a measure of its duty and responsibility —will present itself in connection with the reform of congressional organization and procedure. By setting aside the seniority rule in committee assignments, by discontinuing useless committees and the spoils incident to the present committee system, by insuring publicity for caucus and committee proceedings, and by substituting an effective budget system for the present lax, wasteful, and uncorrelated methods of handling financial legislation, the party will strengthen itself with the increasingly large body of independent voters. Before attempting to reconstruct the nation, Congress should take up boldly and courageously the task of reconstructing itself.

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Proposed Governmental Changes in Pennsylvania.—The revision of the Philadelphia city charter and of the constitution of Pennsylvania is now being actively discussed. The Committee of Seventy, a local civic organization, has called a general conference on the city charter. A wide participation by leaders in civic life is promised. Public attention is directed towards the desirability of a smaller city council with a single body to supplant the larger bicameral councils that have persisted in Philadelphia despite changes elsewhere.

It is also possible that an extension of the home rule principle may be worked out to give the city greater freedom of action on important local questions. Other features of modern municipal advance will undoubtedly receive consideration, such as the short ballot and authority to make use of excess condemnation in connection with proposed public works. By such condemnations the city government and treasury would expect to share in the increases in property values that go with public improvements. Philadelphia has lost the opportunity to do this in connection with the extensive boulevard plans now under way, but the right would be of value in the proposed Delaware River bridge construction, the location of which has just been recommended to the joint New Jersey-Pennsylvania Bridge Commission. A part of the cost of this structure could be provided for by allowing the city to condemn and acquire large sections of the surrounding real estate at the Philadelphia end of the bridge and to hold or resell this property.

The charter revision movement has received added impetus from the vital question of subway construction and from the unprecedented ex-

tension of the city's industries southward along the Delaware. This district has been manufacturing one-half of the American output of munitions; it also includes the Hog Island shipyard and the electrical apparatus plants. While most of it is now outside the corporate limits, a strong effort will be made to extend the city's boundaries southward to include this new industrial region. The acute housing problems that have arisen from this sudden growth may also find recognition in the new charter.

The present state constitution dates back to 1873. Although most of the larger and growing commonwealths have meanwhile brought their fundamental laws into harmony with new conditions, Pennsylvania's document still remains in substantially unchanged form. Many features are not included which in other states are now taken as matters of course. Newspaper report attributes to Governor William C. Sproul the desire to have a constitutional convention draft a new document, rather than to have the legislature attempt to bring the present one up to date by the process of amendments. The convention, if called, will see a marked divergence of opinion between those who favor a stronger state government and those who fear such a change.

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LEGISLATIVE NOTES AND REVIEWS

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Constitution Making in Arkansas. On December 14, 1918, for the first time since 1874, the people of Arkansas (or rather, a small proportion of them) voted upon the adoption of a new constitution. In 1917 the legislature, in response to a growing but not overwhelming demand, called a convention. The Democratic party called a primary and one was held in most of the counties. The vote at the final election (July) was light. A few Republicans were elected from counties strongly Democratic. Lawyers were in a large majority.

The call for the convention had been made before the United States entered the war. Before the election there was some demand for a special session of the legislature to repeal the law providing for the convention. The convention met in November, 1917, when a determined effort was made to adjourn *sine die* on the ground that the war had so altered conditions that the time was inopportune for writing a new constitution. However, this effort failed and the convention voted to appoint committees to consider different topics and adjourned till the following July. On reassembling, the convention took up the report of its committees and finished its work in about six weeks.

The result was the resubmission of the old constitution with numerous minor changes and a few of considerable importance, but none very radical. This conservatism was not wholly due to the conservative character of the members, but partly to the fear that radical proposals would result in the rejection of their work. For example, the convention voted for a unicameral legislature of 35 members, but later reversed this action for the old system. They also voted for the progressive land tax in principle and instructed a committee to bring in a provision for it, but never could agree on the details. However, the maneuvers of the landed interests probably had something to do with this.

Some of the noteworthy changes were: provision for woman suffrage; prohibition (already in force by law); attempts at further restric-

tion on local legislation by the legislature; putting the legislators on a salary; providing for quadrennial sessions; forbidding state officials to stand for reëlection or to run for another office while in office or to resign in order to run; creating a budget committee; creating the office of lieutenant governor; consolidating the railroad and tax commissions into a corporations commission and making it appointive; forbidding the state, counties, and municipalities to expend for ordinary items any sum in excess of the revenue for the year; allowing the issuance of bonds on the approval of 60 per cent of the electors (now forbidden except to the state); adding two members to the supreme court and allowing it to sit in two divisions; allowing jury verdicts by five-sixths vote in civil and misdemeanor cases; providing for juvenile courts; fixing a minimum of six months for public schools; fixing the location of state institutions where now located so as to hold the university at Fayetteville; extending the initiative and referendum to localities and removing the restriction on the number of amendments which may be submitted under it.

The constitution was defeated by about 3,376 majority in a total vote of about 44,934. The vote usually polled in gubernatorial elections is about 165,000.

No one thing caused the defeat. The initiative and referendum secured in 1910 was unsatisfactory after the supreme court held that it had not changed the limitation on the number of amendments that might be submitted at one time (three) and that it did not provide for local operation. The committee reported to the convention a change satisfactory to the friends of popular government, but reactionary changes were incorporated by the convention which made it very unsatisfactory. Of course the whisky element voted against prohibition. Possibly some prohibitionists voted against woman suffrage. Some objected to the useless ornament called lieutenant governor. One prominent legislator objected to the increase of pay to legislators coupled with shortening their time in session and the amount of work, eliminating local legislation. Objection was raised to the consolidation of the railroad and tax commissions into an appointive corporations commission. (The tax commission is appointive.) Some objected to incorporating into the constitution the publicity law, requiring the publication of amendments in newspapers.

The topic always brought forward in urging the calling of the convention was taxation and finance. In the convention much more time was devoted to this than to any other subject, yet the results were very

meager. The main changes were: allowing segregation of taxes for state and local purposes, allowing an income tax three years after the close of the war with Germany, allowing cities to issue bonds, allowing taxation and bonds for improvements, and exempting bonds from taxation. The old limitations on the amount of taxes were retained and could not be exceeded even by popular vote. Yet the fear that the few changes would result in higher taxes probably turned some votes against the constitution.

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Health Insurance. "Voluntary insurance for sickness is one of the oldest institutions among European and American peoples; but the entrance of the state to exercise its sovereignty by compelling individuals to avail themselves of insuring against hazards is comparatively new."[1]

Germany in 1883 adopted an obligatory system; but has since extended the provisions by the laws of 1892, 1903 and 1911 to include additional occupations and industries, to increase benefits and make various other improvements. Norway adopted a similar system in 1909; and Great Britain, a system of compulsory health insurance in 1911. Similar legislation has been enacted in Austria, Hungary, Luxemburg, Serbia, Russia, Rumania and Holland. France, Belgium, Switzerland, Denmark, Sweden and Iceland have adopted a subsidized, voluntary system. The only European countries which, like the United States, are without any general system are Italy, Spain, Portugal, Greece, Bulgaria, Albania, Montenegro, and Turkey.[2]

In the United States, the development of a system for compensating industrial accidents and reducing the risks of hazardous employment has indicated the necessity for further development along similar lines to eliminate or reduce to a minimum the hazards of sickness and old age. The American Association for Labor Legislation has been foremost in study and publicity for the movement. The association created a special national committee to study questions relating to health insurance in December, 1912; in June, 1913, it organized the first American conference on health insurance.[3] In the following year tentative

[1] J. F. Crowell, Social Insurance. Feb., 1917., (pam.).

[2] J. B. Andrews, "Proposed Legislation for Health Insurance." Pp. 549–558. *Bulletin Bureau of Labor Statistics*, No. 212.

[3] Irving Fisher, "The Need for Health Insurance," *American Labor Legislation Review*, March, 1917, p. 9.

standards for a proposed bill were published for criticism and discussion. In November, 1915, the tentative draft, which has since been revised several times, was published and further criticisms and suggestions requested.

In 1915, the California legislature passed a bill[4] creating an unsalaried commission of 5 members to study the question of social insurance. The law was signed by Governor Hiram W. Johnson on May 17, 1915, and went into effect the following August. The commission was organized at Sacramento, California, September 27, 1915.[5] According to legislative instructions, the commission was "to investigate and consider the various systems of social insurance now in use in different countries of this or other states . . . . to report statistics showing the probable expense to the state of any system that it may recommend for adoption, together with any measures of its own relating to this subject that may be deemed expedient."[6]

In 1916, the governors of California, Massachusetts and Nevada supported health insurance in their inaugural messages, while the governors of New Hampshire and Wisconsin urged investigations of the question. Legislative bills modeled after the standard bill of the American Association for Labor Legislation were introduced in the legislatures of Massachusetts, New York and New Jersey in the same year; bringing the discussion from the stage of tentative proposals to questions of immediate political expediency. March 1, 1916, the first American legislative hearing relating to questions of health insurance was held in Boston.

In New York, the senate[7] voted for the creation of a commission to study the question but the assembly[8] adjourned without taking any action beyond referring the bill to the committee on ways and means. In Massachusetts, a commission was created: "to study the effects of sickness, unemployment and old age in Massachusetts, to collect facts as to actual experience with the several forms of insurance therefor, and to recommend . . . . such legislation as it may deem practical and expedient."[9]

[4] California: 1915, *Session Laws*, c. 275.

[5] *Report of the Social Insurance Commission of the State of California*, Jan. 25, 1917, p. 9.

[6] *Ibid.*, sec. 1, p. 473.

[7] New York Senate *Journal*, Vol. 1, p. 483. 1917.

[8] New York Assembly *Journal*, p. 2169. 1917.

[9] *Massachusetts Resolves*, 1916, c. 157, p. 541.

In 1917, bills relating to health insurance were introduced in the legislatures of 15 states. The California and Massachusetts investigating commissions reported to their respective legislatures, their recommendations having an interesting similarity: the inclusion of all low paid wage-earners under a system providing adequate medical care and financial aid during illness; the support of the system by joint contributions from employers, employees and the state; and the entire exclusion of all profit-making insurance companies from the field. The Massachusetts commission was continued by the general court to make further investigations " . . . . of the extent to which poverty occasioned by sickness may be alleviated, medical care for wage-earners and others of limited means, and measures to prevent disease may be promoted, by insurance."[10] Allowances for travel and other expenses were to be made by the governor and council. The California legislature submitted the constitutional amendment proposed by the social insurance commission to popular vote in November, 1918.

During the legislative sessions of 1917, new investigating commissions were created in the following states: Connecticut,[11] Illinois,[12] New Hampshire,[13] Ohio,[14] Pennsylvania,[15] and Wisconsin.[16]

In 1918, the governors of New Jersey and Massachusetts in their annual messages recommended the adoption of health insurance as a means of conserving public health. No legislation resulted from the introduction of bills and no new commissions were created. The Massachusetts commission made its report to the general court January 15, 1918, submitting drafts of proposed legislation relating, among other things, to the extension of the facilities for medical aid; the organization of voluntary industrial group insurance; and recommending the establishment of a commission to investigate further the question of state health insurance, " . . . . as a measure of relief for the wage-earners suffering from sickness and its consequences."[17]

So far, the only measure submitted for popular vote is the California constitutional amendment which was defeated by a very decisive vote

[10] *Massachusetts Resolves*, 1917, c. 130, p. 499.

[11] Connecticut: 1917, *Session Laws*, c. 163.

[12] Illinois: 1917, *Session Laws*, p. 488.

[13] New Hampshire: 1917, *Journal*, p. 697, House Resolution.

[14] Ohio: 1917, *Session Laws*, p. 520.

[15] Pennsylvania: 1917, *Session Laws*, c. 414.

[16] Wisconsin: 1917, *Session Laws*, Joint Resolution 24, c. 604.

[17] Report of the Special Commission on Social Insurance, Jan. 15, 1918. Senate No. 244. See also C. D. Babcock, *The A B C of Compulsory Health Insurance* (pam.).

in November, 1918. During 1919 there are six legislative commissions to report the results of their investigations and it has been estimated that legislation will be proposed in thirty or more states. The rapid development of the movement has been stimulated by the publication of the statistics relating to draft rejections. The attitude of various agencies, public and private, seems rather more favorable than at first, as shown by the indorsement of the American Federation of Labor in its annual meeting at St. Paul, Minnesota, June 10–20, 1918:

"The enactment of workmen's compensation laws by a number of state legislatures is now being followed by the development of a favorable sentiment for the enactment of health insurance laws. Already legislation of this kind has been considered by a number of state legislatures and in addition, commissions have been created for the purpose of making an exhaustive study of the subject and a report to their respective legislative branches thereon.

"Central bodies and state federations of labor in several places have been studying the question. Some of them have approved the principle, while others are supporting laws providing for universal health insurance.

"The organized labor movement approved the enactment of workmen's compensation legislation. Their approval of that legislation was based upon the theory that when the earning power of a worker was impaired by reason of an industrial accident, that he or his dependents should be compensated during the time he was suffering from said injury. The same rule holds good when the worker becomes incapacitated through illness—particularly illness due to trade or occupation. He and his family suffer through the impairment of his earning power just the same when he is ill as when he sustains an injury. The organized labor movement of America ought to formulate a program upon this subject.

"We therefore recommend to this convention that it authorize the Executive Council of the American Federation of Labor to make an investigation into the subject of Health Insurance, particularly as it applies to trade or occupational disease. If approved a model bill be formulated and reported to the American Federation of Labor for approval. We urge that as part of such legislation there should be embodied fundamental principles of democratic administration and guarantee to the workers of an equal voice and equal authority in the administration of all its features."

DOROTHY KETCHAM

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Social Legislation. *Employment Bureaus.* The problem of employment and employment offices was the subject of legislation in nineteen states, twelve enacting laws providing for free employment agencies for general and specific classes of unemployed, six enacting measures regulating and controlling private employment agencies, and one, Oregon, authorizing a committee to investigate the subject of unemployment and poverty and recommend remedial legislation. The Arkansas free employment bureau, maintained by the commissioner of labor, and the free employment offices in the state of Arizona were established by new statutes,[1] while amendments to the Colorado,[2] Georgia,[3] Minnesota,[4] and New Hampshire[5] statutes provide for employment bureaus accessible to the unemployed free of charge. Illinois, Wisconsin and New York treated the problem of the unemployed with reference to special classes: discharged convicts, blind adults, and children entering industrial employment being the subjects in the respective states.

The legislature of Pennsylvania enacted an interesting statute (No. 411) providing for "increased opportunities for employment in useful public works" in the state during periods of "extraordinary unemployment caused by industrial depression," and creating a fund to be known as the emergency public works fund. The governor, auditor general, the state treasurer and the commissioner of labor and industry are constituted as an emergency public works commission for the "custody, management, and disposition" of the $50,000 annual fund. The only prerequisites necessary for applicants are that they be citizens of the United States and residents of the state of Pennsylvania for six months.

Not less interesting is the law enacted by the legislature of South Carolina providing for a state board of charities and public welfare, of which at least one member must be a woman, and all of whom serve without pay. The duties of the board are to study nonemployment, poverty, vagrancy, housing conditions, and the prevention of any hurtful social condition; to "encourage employment by counties of a county superintendent of public welfare," and to "coöperate with the county superintendent." The county commissioners are given the power to create the county board of charities and public welfare, and to employ a county superintendent of public welfare. Among the duties of the

[1] Arkansas, ch. 21. Arizona, No. 11.
[2] Ch. 76.
[3] Ch. 88.
[4] Ch. 113.
[5] Ch. 198.

superintendent is that of assisting the state board in finding employment for the unemployed.

The most important legislative action dealing with the regulation of private employment agencies was the restriction of licenses, registration fees, and limiting the time in which an agency may keep the registration fee if no employment is procured. The first law enacted on this subject by the legislature of the state of Tennessee regulates the license fee according to the population of the county. Another feature of this law is that the applicants for employment must be advised of the general conditions existing at the place to which they are sent, and must be told of the presence or absence of any labor dispute, strike, or lockout then existent with reference to the employment.

A Massachusetts bureau of immigration was created by the 1917 legislature,[6] consisting of five persons appointed by the governor, to serve without compensation, but provided with an expense fund of $10,000. Its purpose is to protect immigrants from exploitation and abuse, and to promote their assimilation and naturalization. Such legislative action is a means of bettering labor conditions among the immigrant population.

Bureaus of Labor. Of the states enacting labor bureau laws, Illinois, creating a civil administrative code, and Wyoming, providing for its first commissioner of labor and statistics, deserve special attention. The popularity of labor bureau legislation is shown by the acts increasing the total allowance of labor bureaus and the salaries of commissioners; reorganizing industrial laws and especially those concerning inspectors of industrial welfare and conditions, in some twelve of the state statutes; and the legislative action of the assemblies in the Philippines and Porto Rico providing in the former territory for the reduction of the salary of the bureau director, and in the latter for the appointment of an assistant to the commissioner of agriculture and labor. Mention should be made of the act passed by the legislature of Utah creating an industrial commissioner charged with inspection of factories and mines and gathering statistics. Massachusetts in 1918 (ch. 276) authorized the appointment of five additional inspectors for the emergency to serve for one year.

The civil administrative code of Illinois[7] creates a department of labor, a department of mines and minerals and a department of registration and education. Directors and assistant directors, approved by

[6] Ch. 321.

[7] *Acts*, 1917, p. 2.

the governor with the approval of the senate, act in coöperation with advisory and nonexecutive boards. The department of labor exercises and discharges the duties of the industrial board created by the workmen's compensation law, and, in addition, performs the duties of the commissioners of labor, superintendents of free employment offices, inspectors of private employment agencies, factory inspectors, and the state board of arbitration and conciliation. The department of mines and minerals exercises all the powers formerly invested in the state mining board, the state mine inspectors and the miners' examining commission, and also seeks to promote the general welfare and safety of miners. The duties of the department of registration and education are to exercise the powers vested in the board of examiners of horseshoers, and the state board of barber examiners.

Wyoming in creating a commissioner of labor and statistics inaugurated a new office in the state. The duties of the office are to enforce all laws relating to labor and to the health, welfare, and life of the workers of the state; to investigate industrial conditions and to report recommendations for improvement to the governor.

Mothers' pensions. The first laws on this subject were enacted in 1911 when Missouri and Illinois granted sums of money to the mothers of dependent children. Since 1911 over thirty states have enacted laws covering this subject. The extension of this legislation is shown by the fact that six states[8] enacted original laws in 1917, while ten other states passed amendments to the former laws on the subject. The new legislation applies in general to fixing the relative amount to be paid to the mother according to the age of dependency, and other factors.

The allowance to the parent is authorized in the Montana act only when the mother may be required to work regularly in the absence of such an allowance. The Texas law requires that the board of county commissioners see that the widow receiving the allowance is keeping the dependent children properly, and that they are properly cared for and fed. The board has the power to revoke an order provided for under the act when it deems the support no longer necessary. Arizona provides for local boards of child welfare in each county of the state directly responsible to the board of supervisors of the state. Arkansas makes provision for wives of husbands incapacitated for work. In each city, town and plantation, the legislature of Maine established a

[8] Montana, ch. 83; Texas, ch. 120; Arizona, No. 70; Arkansas, No. 326; Maine, ch. 222; Minnesota, ch. 223, 1917.

municipal board of mothers' aid which reports to the state board. The law of Minnesota provides that no allowance shall be paid toward the support of any child who has become "lawfully entitled to apply for and receive an employment certificate or who has ceased to be under the immediate care of the mother."

Interesting amendments to the laws of several states are seen in the acts of Oregon,[9] Wisconsin[10] and Nevada.[11] The Oregon amendment requires that a mother must be a citizen of the United States, and of the state for three years. Members of the family over age and older members or friends living with the family must contribute proportionately to the expenses of the household. No assistance is given to an applicant who has property of an appraised value exceeding $500. The Wisconsin law now provides that the parent receiving aid shall file monthly with the judge of the juvenile or county court a statement showing the expenditures of the money received under this act, and the receipts or vouchers for the same. The judge may also require the mother to do such remunerative work as she can do without neglecting her children or her home. The amendment to the Nevada law allows the mother $25 per month for one child under the age of fifteen years, and $15 per month for each of the other children under the prescribed age, but the entire allowance must not be more than $55 per month.

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Taxation in 1917 and 1918. *Classification of Property.* The legislature of South Dakota, in 1917, proposed[1] an amendment to the constitution, providing for the classification of property for the purposes of taxation. Uniform taxes are to be levied on all property in the same class. "Property" includes money and credits, privileges, franchises, and licenses to do business, as well as physical property. Taxes may also be levied upon gross earnings, net incomes, and occupations—income taxes may be graduated and progressive. The legislature is empowered to make reasonable exemptions in the different classes. This amendment is a slight variant from the one proposed[2] in 1915, providing for the classification of property for the purposes of taxa-

[9] Ch. 267, 1917.
[10] Ch. 289, 1917.
[11] Ch. 11, 1917.

[1] 1917, *Session Laws*, p. 212.
[2] South Dakota 1915, *Session Laws*, p. 463.

tion, which was not ratified by the people. Provisions omitted in the new amendment relate to a tax limit of two mills of the assessed valuation of all taxable property, to constitutional exemption of national, state, county and municipal property, and that of agricultural societies and of religious, educational or charitable uses, and to payment of all state taxes to the state treasury. The occupational tax provision is the new feature in the 1917 amendment.

Ohio has finally adopted[3] at the general election, November, 1918, a constitutional amendment for the classification of property for the purposes of taxation. Such an amendment has been proposed numerous times before in the past decade, and has always failed to carry. This amendment permits the legislature to provide for the raising of revenues for all state and local purposes in such manner as it shall deem proper. The subjects of taxation shall be classified, and the rate of taxation shall be uniform on all subjects of the same class, and shall be just to the subject taxed. Exemptions may be provided for religious, charitable, educational and burial societies and their property, and exemption of personal property, under five hundred dollars, may be granted.

Inheritance Taxes. The legislature of Pennsylvania has imposed[4] an inheritance tax at a flat rate of 2 per cent upon all estates, allowing a discount of 5 per cent of the tax for payment within three months from date of death, and subject to interest at 12 per cent, if not paid before the end of the year thereafter. This tax applied as well to estates passing to illegitimate children. Upon approving this bill, Governor Martin B. Brumbaugh filed a protest against the principle of an ungraduated inheritance tax, as follows: "This bill is approved with the greatest reluctance. I am constrained to do so solely because the securities of the Commonwealth require the raising of additional revenue. I repeatedly urged the responsible leaders in charge of the legislative program to provide additional revenue . . . [by] imposing a small and entirely reasonable tax . . . upon coal, oil, and natural gas consumed more largely without than within the State . . . [and] upon the capital stock of manufacturing corporations. Had [these bills] passed, this unjustially drastic tax on direct inheritance would have been unnecessary and would not have been approved. The senate committee, thus chose deliberately to tax the estates of poor and rich alike . . . against the welfare of all the people. This direct inheritance tax applies to all property of decedents going to

[3] Amendment to the Constitution, Art. XII, Sec. 2.

[4] 1917, *Session Laws*, p. 832.

direct heirs. It covers estates of every size even to the smaller. There are no exceptions. In some states there is a graded tax, with exceptions to the small estates." The governor added that such a graded tax is unconstitutional in Pennsylvania and his approval is given to this measure only in the hope that the constitutional amendment adopted by the legislature permitting the graded tax will be ratified by the people in 1919.

North Dakota passed an inheritance tax law[5] providing for the following rates: 1½ per cent on property passing to direct heirs, 3 per cent to aunts, uncles, and their heirs, 4 per cent to great aunts and their heirs, 5 per cent to other degrees or strangers in blood, with a surtax of 1½ times the primary rates upon property amounting to from $25,000 to $50,000, and three times upon property amounting to over $50,000.

Massachusetts[6] has increased its inheritance tax 25 per cent, and its income tax 10 per cent, of the total amount imposed by previous acts.

Income tax. In a resolution in 1917,[7] the legislature of Kansas protested against possible encroachment of the national government upon state revenue, urging that ample federal revenues be provided for by indirect taxation. It asks that a line be drawn between the sources of federal and state taxes.

Exemptions. To encourage private forestry, Michigan[8] has exempted from taxation private forest reservations amounting to not more than one-fourth of the total area of the farm holding, where such tract is planted with not less than 1200 trees to the acre. Such trees must be forest trees (not fruit bearing) as named in the act, and the reservations must not be used as pasture until 90 per cent of the trees are two inches in diameter. A description of the forest reservation must be filed with the county treasurer and continuous proper care must be given to it. The exemption applies to all values over and above a dollar an acre.

The legislatures of Massachusetts, New York, and Connecticut have also passed acts exempting certain other kinds of property from taxation. Massachusetts[9] exempts the personal property of religious corporations, used for religious, benevolent, or charitable purposes. Connecticut[10] exempts the mortgage bonds of any corporation, secured

[5] 1917, *Session Laws*, ch. 231.
[6] 1918, *General Acts*, p. 126.
[7] 1917, *Session Laws*, p. 502.
[8] 1917, *Session Laws*, p. 155.
[9] 1918, *General Acts*, p. 65.
[10] 1917, *Session Laws*, p. 160.

by lien upon property of such corporation with the state. New York[11] and Connecticut[12] both exempt bonds of state, counties and municipalities.

State Tax Commissions. Missouri has established[13] a state tax commission, to familiarize itself with all sources of income from taxation by the state and its subdivisions, and to investigate and supervise the work of the administrative officers affecting finances. The members are required to possess knowledge of the subject of taxation, to have had training in administration of revenue laws, and to be skilled in matters pertaining to public economy and public revenue.

Ohio has given to the courts the right of revision over the orders of the state tax commission relating to the valuation of the property for taxation.[14] The tax commission must certify its action to the property owner in the same form as to the county auditor and within thirty days from date of service, the property owner may file a petition in error in the court of common pleas against such order. Whereupon the tax commission must deliver a certified transcript of its final order and the evidence on which it is based, to be filed with the court which shall hear the case and may revene, vacate, or modify the order. Either party has the right to prosecute error as in other cases, and any other interested party may intervene by cross petition.

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[11] 1917, *Session Laws*, ch. 97.
[12] 1917, *Session Laws*, p. 113.
[13] 1917, *Session Laws*, p. 542.
[14] 550, *Session Laws.*

JUDICIAL DECISIONS ON PUBLIC LAW

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Aliens—Temporary Naturalization. In re Naturalization of Aliens in Service of Army or Navy of United States (U. S. District Court, June 14, 1918, 250 Fed. 316). This case raises the question whether an alien soldier or sailor in the service of the United States may become naturalized when he states upon his examination that he does not intend to reside permanently in the United States but intends to return to his native country as soon as he is discharged from service. The court decided that while the naturalization laws are silent upon this point, "the intentions of Congress that there should be no naturalizations for temporary purposes may be deduced from Act March 2, 1907, which provides for a forfeiture of naturalization, if the naturalized citizen shall have resided for two years in the foreign state from which he came." It is the opinion of the court that "to seek to be naturalized temporarily would be a fraud on the nation, and clearly in conflict with the oath of allegiance."

Congress—Qualifications of Members—Power of State to Regulate. State v. Howell (Washington, October 16, 1918, 175 Pac. 569). The constitution of Washington contains a clause providing that judges of the supreme court and of the superior court shall be ineligible to any other office or employment during the term for which they shall have been elected. A judge of the state supreme court whose term would have expired in 1921 resigned in May, 1918, in order to become a candidate for membership in the national house of representatives. An injunction was asked to restrain the secretary of state from printing his name on the primary ballot on the ground that he was ineligible under the provision of the state constitution mentioned. The court refused to issue the injunction. The qualifications for membership in the houses of Congress are laid down in the Constitution of the United States and no state has any authority to add to or subtract from those qualifications. While the state, in the absence of federal legislation, has power to ar-

range the manner of nominating candidates for Congress, that power does not give it any authority to determine the qualifications of those seeking nominations for those offices.

Freedom of Press—Power of Municipalities to License Circulation and Sale of Newspapers. Star Company v. Brush (New York, Supreme Court, September, 1918, 172 N. Y. Supp. 320). In the case of Star Company v. Brush, 170 N. Y. Supp. 987, it was decided that an ordinance of the city of Mt. Vernon, New York, forbidding the publication or sale of foreign language newspapers together with that of two New York newspapers specifically named in the ordinance was unconstitutional. Thereupon the city council and mayor of Mt. Vernon enacted the ordinance the validity of which is questioned in this case. This ordinance forbade the circulation or sale of any newspapers by anyone who had not first secured from the city council a license. These licenses were to be issued in the practically absolute discretion of the council and were revokable without notice. This ordinance met the fate of its predecessor. The court pointed out that under its provisions the city council had authority to say which, if any, newspapers might be sold and could arbitrarily suppress those which might display political hostility toward the city fathers. Such an ordinance contravenes the provision of the state constitution guaranteeing freedom of the press.

Intoxicating Liquors—Prohibition—Constitutionality. Schmitt v. F. W. Cook Brewing Co. (Indiana, June 28, 1918, 120 N.E. 19). The power of a state legislature to prohibit the manufacture and sale of intoxicating liquor is no longer open to question. This case adds another decision to a long line of authorities. It is interesting, not because it presents any novel arguments in support of the prohibitory power, but because of the attitude which the court assumes toward an early decision holding a prohibition law unconstitutional. "The principle of *stare decisis*," says the court, "if it existed, has no application to the police power because there can be no property rights which are not subject to this power. . . . . If this were not so, mistaken decisions would destroy that very power of society to protect itself and a new constitution would be created by the courts. Courts cannot decide away that which the state cannot contract away. Courts cannot make a new fundamental law by erroneously reading limitations into the Constitution not therein expressed. The principle of *stare decisis* is a rule of property the use of which does not affect the public welfare. It cannot be invoked to shut off the police power."

Minimum Wage—Constitutionality. Holcombe v. Creamer (Massachusetts, September 23, 1918, 120 N.E. 354). The Massachusetts minimum wage law was enacted in 1912 and amended during the two succeeding years. It provided for the creation of a minimum wage commission which could appoint wage boards to investigate wage conditions of women in individual industries and report their findings and determinations of what constitutes reasonable minimum wages to the commission. After a review of these determinations and a hearing for the employers concerned if they desire it, the names of such employers as refuse to pay the minimum wage thus declared to be reasonable are to be published in the newspapers throughout the state. The commission was authorized to institute subsequent investigations to determine whether or not the employers concerned are actually paying the specified minimum wage. This is an action by the petitioners to compel the respondents to give information at such an investigation to ascertain such compliance or noncompliance with the law. The refusal of the employers concerned to testify was based on the alleged unconstitutionality of the law. The law is held to be constitutional. In the first place a minimum wage is not imposed upon any employer by penalty of the law, and the only force back of it is the force of public opinion. The law is therefore free from the attack which might be launched against a compulsory minimum wage law. In the second place a review of a long list of authorities indicates that in multifarious ways the state may constitutionally interfere with the freedom of contract between employer and employee in the legitimate exercise of its police power. The regulation of the freedom of contract involved in this law is less rigorous than in many of those statutes. Finally since no criminal action may be instituted against any employer for noncompliance with the wage determinations made by the commission it cannot be said that an employer is obliged to incriminate himself when he is compelled to testify as to the fact of his observance of such wage determinations.

Police Power—Freedom of Contract—Regulation of Tips. Ex parte Farb (California, July 30, 1918, 174 Pac. 320). This case involves the validity of a statute enacted in 1917 which forbade any employer from making it a condition of employment in his service that any employee must enter into a contract to surrender to such employer all tips received while in his employ. This law was held unconstitutional. While the state might in the exercise of its police power pass laws to mitigate or

prevent the abuses arising from the custom of tipping, this law cannot be said to have any such effect and cannot therefore be said to have any substantial relation to the public welfare. Many different kinds of police regulations have been passed restricting the freedom of contract of employers and employees but in each case the purpose has been to protect the health, safety or morals of the employees or promote the general welfare. There are no such considerations of public welfare to justify the interference with freedom of contract herein involved. The court repudiates the argument that the law could reasonably be supposed to prevent fraud upon the patrons who tip. The act is, accordingly, a violation of due process of law.

Police Power—Ordinance Regulating Patent Medicines. Fougera & Co. v. City of New York (New York, October 15, 1918, 120 S. E. 642). Certain sections of the sanitary code adopted by the board of health of the city of New York provide in substance that there shall be no sale of patent or proprietary medicines unless the names of the ingredients shall be registered in the department of health. This information is to be regarded as confidential. There must also be filed a copy of all advertising matter distributed with any such medicines and they are to be regarded as misbranded if the names of any of the ingredients are omitted or misstated or if any false statements are made regarding the therapeutic effects. The plaintiff alleges that it is the importer of certain patent medicines from foreign countries, that it does not know the names of their ingredients and cannot learn them. The constitutionality of the ordinance is attacked on two grounds, first, that it is an arbitrary exercise of governmental power and not within the proper scope of the police power, second, that it is an exercise of power in excess of that delegated by the legislature to the city. The court regards the purpose of the ordinance as legitimate. It aims directly at the preservation of the public health and safety and is reasonably designed to accomplish that salutary purpose. There is no force in the claim that the ordinance requires dealers in patent medicines to give evidence against themselves because it merely lays down the conditions under which that business may be carried on and the requirement of publicity cannot be regarded as compulsory self-incrimination. The ordinance does not violate the federal constitution by interfering with interstate or foreign commerce since there is no conflict between it and any act thus far passed by Congress. The ordinance is, however, fatally defective in that it does not exempt from the application of its provisions

the dealers who, like the plaintiff, have on hand stocks of patent medicines the ingredients of which they do not know and cannot find out. In regard to the existing stores of merchandise in the hands of dealers the ordinance operates as an absolute prohibition of sale and not a mere regulation. The condition of sale is impossible of fulfillment and the ordinance results, therefore, in an actual forfeiture of property. There is no power, even in the legislature, to work such a forfeiture and *a fortiori* there is no such power which can be implied from the grant of authority contained in the New York City charter. Since the ordinance cannot be so construed as to separate the part which is valid from that which is not, the whole ordinance must be declared void.

Police Power—Time of Wage Payments. Moore v. Indian Spring Channel Gold Mining Co. (California, May 28, 1918, 174 Pac. 378). It is a legitimate exercise of the police power to require that any employer who discharges an employee must pay the wages due immediately under a penalty recoverable by the employee. Such an act involves no deprivation of property without due process of law. It is aimed to assure to the laborer the prompt payment of his wages and as such has an intimate connection with the welfare of employees and of the public. An earlier statute was declared unconstitutional (In the Matter of Crane, 26 Cal. App. 22; 145 Pac. 733) because a criminal penalty was attached to the failure to pay wages promptly to discharged workmen and this was declared to be a violation of the clause of the state constitution forbidding imprisonment for debt. The penalty attached to the violation of this statute is not criminal but civil and remedial and, therefore, the objection does not lie.

War Problems. *Alien Enemies—Right of Declarants to Vote.* State v. Covell (Kansas, November 9, 1918, 175 Pac. 989). Among those qualified to vote in the state of Kansas are "persons of foreign birth who shall have declared their intention to become citizens conformably to the laws of the United States on the subject of naturalization." The question arises in this case whether or not German and Austrian subjects who have thus declared their intention to become American citizens may be denied the right to vote. The court admits that the language of the constitution does not seem to leave room for discussion on that point, but it finds a way nevertheless to avoid such a result. "There are aliens and aliens," declares the court, "and alien friends may become citizens of our country, but alien enemies cannot, and evidently the

people who framed and adopted our Constitution were speaking of that class of aliens who might complete naturalization and become citizens of this country, and not of those who could not under any circumstances be admitted to citizenship." The court points out that under the literal interpretation of the clause in question subjects of nations at war with this country might have the power to elect the Congress or even the President. It follows from all these considerations that declarant enemy aliens cannot be allowed to vote.

Espionage Act—False Statements regarding Army Y. M. C. A. and Red Cross. United States v. Nagler (U. S. District Court, July 25, 1918, 252 Fed. 217). The Espionage Act makes it a crime for anyone "wilfully to make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States." This case holds that the Red Cross and the army Y. M. C. A. constitute part of the military and naval forces of the United States, by reason of the intimate connection they bear to the actual fighting forces and by reason of the responsibilities which have been placed upon them by the government. It is, therefore, a violation of the Espionage Act to make false statements which will interfere with the success of these organizations and the defendant in this case who branded both organizations as groups of "grafters" was properly indicted under the statute.

Labor Unions—Right to Strike during War. Rosenwasser Bros. v. Pepper (New York, Supreme Court, October, 1918, 172 N. Y. Supp. 310). The plaintiffs were engaged in the manufacture of shoes for the United States government. They seek a permanent injunction against the defendants to restrain them from continuing to strike, from inciting any of the employees of the plaintiff to strike, and from all acts of violence, picketing, etc. There was, of course, no question as to the right of the plaintiff to injunctive relief from acts of violence. The court declared that under antebellum conditions it is the established law of the state of New York "that a labor union may induce or persuade the employees of a manufactory or other business, which is conducted by the owner thereof either as an open or a nonunion shop, to become members of the union, and to strike in order to compel the owner to conduct his factory or business as a union shop." But under war conditions, in the light of the paramount importance of providing steadily and without interruption the supplies necessary for the conduct of the

war, and in the light of the equitable and satisfactory provisions which the government of the United States has provided for the adjustment of differences arising between employers and employees in war industries by means of mediation, it cannot be said that the right of labor to strike remains absolute and unimpaired. Consequently an injunction should issue to restrain any repetition of the acts of violence which have already occurred and also an injunction against "strikes for any cause whatever" for the duration of the war. It shall be lawful within the terms of the injunction, however, for the defendants to "persuade the plaintiff's employees to join the union" or "demand of the plaintiff anything they deem of advantage to the employees or the union," and "may seek the attainment of their demands by application to the United States government, or the government of the state of New York."

Selective Service Act—Deferred Classification Based upon Conviction for Crime—Effect of Pardon. United States v. Commanding Officer of 87th Division (U. S. District Court, June 3, 1918, 252 Fed. 314). This case comes up on the petition of one Schwartz for a writ of habeas corpus to be released from military service. He was inducted into military service under the provisions of the Selective Service Act. He claims that he should have been placed in deferred class 5H inasmuch as he was convicted of murder in the state of Mississippi in the year 1912 and falls, therefore, within the class of moral delinquents. It appeared that subsequent to his conviction for felony he was pardoned by the governor of Mississippi on the condition that he should leave that state and never return. It is held in this case that the effect of the pardon was to remove all the legal effects of the crime. It is inconceivable, in the judgment of the court, that the draft regulations should have the effect of depriving a person who had received a full pardon for crime "of one of a citizen's greatest privileges, to bear arms in the defense of his country."

Selective Service Act—Desertion—Precedence Between Civil and Military Prosecutions. Ex parte Dunn (U. S. District Court, January 9, 1918, 250 Fed. 871). This is a petition for a writ of habeas corpus. The petitioner failed to register for the draft and a prosecution was instituted against him in a United States district court. While this action in the civil court was pending he was notified to report for military service and when he failed to do so he was arrested by the military authorities,

tried by court-martial, and sentenced to the penitentiary. The court repudiated the petitioner's contention that during the pendency of the action against him in the civil courts he was exempt from military service. Such a result is in conflict with the general purpose and tenor of the Selective Service Act. The acts of the petitioner made him an offender against both the criminal and military law of the United States. The question as to which jurisdiction should deal with him first is one which is to be settled between the military and civil authorities and the prisoner has no right to be tried first by the civil courts.

War Materials—Priority of Government Orders—Effect on Private Contracts. Moore & Tierney v. Roxford Knitting Co. (U. S. District Court, July 1, 1918, 250 Fed. 278). Under the provisions of the National Defense Act, June 3, 1916, and the Naval Appropriation Act, March 4, 1917, it is obligatory upon manufacturers from whom the United States government orders supplies to comply with such orders and to give precedence to such orders over any which may have previously been placed by private persons. In this case the plaintiff had contracted with the defendant to supply certain materials. Demands for war materials were then made upon the plaintiff by the office of the paymaster of the navy and precedence was given to these demands with the result that the goods which the defendant had contracted for were not delivered at the stipulated time. It was admitted that the paymaster of the navy did not couch his demands for supplies in the form of a formal order which by its own terms should be immediately obligatory, nor was any specific reference made to the two acts of Congress referred to. It was held by the court, however, that in order for the plaintiff to come within the provisions of these statutes it was not necessary for the requirements of the government to be phrased in the language of a formal command. It was enough that the plaintiff understood that immediate compliance was expected and that the filling of the government's requirements was not optional on his part. If the plaintiff had refused such compliance with the demands made upon him he would have been liable to damages and would also have laid himself open to the possibility of having the government take summary possession of his plant. Under these circumstances the defendant is without remedy for the plaintiff's failure to perform his contract obligations within the required time.

FOREIGN GOVERNMENTS AND POLITICS

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British Parliamentary Elections. War-time conditions joined with a new and revolutionizing electoral law to give the British parliamentary elections of last December many novel features. The national electorate, including six million women, was twice as large as ever before; balloting, except by soldiers and other absentees, was confined to a single day; votes were allowed to be sent in by post, or to be cast by proxy; the usual party contest was replaced by a trial of strength between a coalition government which found support among practically all political elements and a number of groups whose physiognomy would hardly have been recognized by an antebellum observer.

The first important question was whether there should be an election at all; that is, whether before the peace treaty was signed. The adoption of the Representation of the People Act a year ago set up a presumption that Parliament would be dissolved reasonably soon. Military reverses in ensuing months discouraged any plans in that direction. But by mid-summer the situation on the various fronts was again well in hand, and thenceforward there were increasing signs that the coalition government meant to make an early appeal to the electorate for a fresh lease of power; and its purpose in the matter was definitely announced in the early autumn. The old-line Liberals, led by ex-Premier Asquith, roundly opposed the plan. They said that notwithstanding the arrangements contemplated in the new electoral law, a large proportion of the three million soldiers on foreign soil would be unable to vote. They urged, too, that no election was needed to enable Mr. Lloyd George's government to go to the peace conference with the mandate of a united people; this government had won the war, and no one disputed its right to make the peace. The Labor party also objected, avowedly because of apprehension about the soldier vote, although in reality because the machinery which the party has been building up in the constituencies since its reorganization a year ago was as yet incomplete.

The Coalition leaders, however, declared an early election a plain necessity. The existing Parliament dated from December, 1910, and hence had overrun the legal maximum by three years; five times since 1915 it had extended its own life. It is true that almost one-half of the members of the house of commons had been returned at by-elections since the general elections of 1910. But everyone conceded that the body had grown weary, spiritless, feeble, and unrepresentative. It was moribund, declared the premier, and lacking in authority from the broadened and altered electorate to deal with the great problems confronting the country. Britain's spokesmen at the peace conference must know that they had behind them a house of commons fully and freshly representative of the nation, and one which could be trusted to take up with unspent vigor the tasks of economic and social reconstruction. Non-Coalition Liberals charged that the premier was looking beyond the peace, and that what he really had in mind was a prolonged lease of power, to be obtained while the nation was disinclined to a political overturn, and to be employed in carrying out a program fashioned in collaboration with his Unionist supporters.

Parliament was prorogued November 21, the dissolution following in four days. Already, on November 16, the premier and Mr. Bonar Law had opened the Coalition campaign at a meeting in Central Hall, Westminster; and soon thereafter they put their case formally before the voters in a joint manifesto. Notwithstanding their emphasis upon the imminence of the peace conference as a reason for holding an election, the government leaders were curiously silent upon international matters until the campaign was far advanced. The premier made long speeches in which the subject was not touched; the manifesto briefly proclaimed the government's intention, if kept in power, to procure a "just and lasting peace" and to promote the formation of a league of free nations, yet devoted itself mainly to topics of a domestic, or at least a purely British, character.

Of such topics, seven were given principal emphasis: (1) land reform, with a view to the general increase of allotments and small holdings, the elevation of agricultural wages, the expansion of agricultural production, and especially the settlement of returned soldiers and sailors on the land; (2) housing reform, and the improvement of village life on "large and comprehensive lines;" (3) fiscal legislation so shaped as to reduce the war debt with a minimum of injury to industry and credit, to avoid fresh taxes on food and raw materials, and to set up a preference in favor of the colonies upon existing or future

duties; (4) liberation of industry as speedily as possible from government control; (5) reform of the house of lords, so as to create a second chamber "which will be based upon direct contact with the people, and will, therefore, be representative enough adequately to perform its functions;" (6) execution of the pledge already given to "develop responsible government in India by gradual stages;" and (7) solution of the Irish problem on the basis of self-government, but without either the severance of the island from the British Empire or the forced submission of the Protestant counties of Ulster to a Home Rule parliament.

One can understand why the Coalition campaigners should have preferred to say little about international affairs. Such discussion would inevitably lead into the minutiae of complicated questions upon which it was difficult or futile to take a stand. The voters, however, soon wearied of the pabulum handed out to them. Ordinarily the Irish question, land reform, and imperial preference could have been depended upon to furnish fuel for a sufficiently exciting contest. But what the men and women who attended political meetings now wanted to know was: What was to be done with the Kaiser? Was Germany to be made to pay the costs of the war? And what was to be the government's policy regarding enemy aliens? Upon these, and other related matters the premier and his colleagues were finally obliged to speak. At Newcastle, November 29, Lloyd George declared for a "relentlessly just" peace, the expulsion of enemy aliens, payment by Germany of the costs of the war up to the limits of her capacity, and the punishment of individuals (including the Kaiser) responsible for the war and for infractions of international law. There were plenty of evidences that the country was in a mood for social and political reform of a thoroughgoing character; but the popular attitude was rather that of assuming that such reform must and would come. The only questions on which the electorate allowed itself to be wrought up were those relating to the terms with Germany.

It early became apparent that, outside of Ireland, the voters had three groups to choose from: the Coalition, the old-line Liberals, and the Laborites. Pronouncing the election "a blunder and a calamity," the non-Coalition Liberals, led by Mr. Asquith, frankly avowed their purpose to maintain their party character. A declaration adopted by the National Liberal Federation at its Manchester meeting in October, and ratified by the Scottish Liberals' meeting at Glasgow, served as a platform. After taking advanced ground in industry, agriculture, capital and labor, housing, taxation, public health, and other social

topics, this instrument reaffirmed the belief that free trade is vitally necessary to the welfare of the nation; and it urged that Irish self-government be at once made "not only what it is, a statutory right, but an accomplished fact." Throughout the campaign the concessions of Lloyd George to his Unionist colleagues and supporters were warmly denounced. Imperial preference once an accomplished fact, it was argued, the hated taxes on food would soon follow; home rule was a legal fact and ought not to be cavalierly shelved; and what would a reform of the house of lords be worth if carried out by a government whose mainstay is the Tory party? On the questions which most interested the voters, i.e., those related to the conditions of peace, Mr. Asquith and his followers could only take a common position with the government. But, threatened with disaster, the Liberal remnant waxed very indignant over their former leader's alleged disregard of their interests, particularly as seen in his approval of Coalition candidates standing against life-long Liberals and in constituencies that have never been anything other than Liberal.

No small share of public interest in the campaign was due to the activities of the Labor party. When the election became assured a curious situation arose in the Labor ranks. At an emergency conference held at London, November 14, the party decided, by almost three to one, that a general election would terminate the conditions under which the party entered the Coalition, and that its eight representatives in the ministry should withdraw when the present Parliament was dissolved. The parliamentary members, however, took the ground that this would mean to deprive Labor of its proper voice in the peace discussions and would degrade the party to the status of a protesting faction. The ministerial members refused to obey the party order and took the field as Coalition candidates; the most important of them, Mr. G. N. Barnes, formally severed his party connection. This division somewhat weakened the party position. None the less the Labor campaign was more vigorous than that of any other group outside of Ireland. Upwards of four hundred candidates were placed in the field; and a manifesto headed "Labor's Call to the People" challenged universal attention. The main points were: "a peace of international coöperation," involving a league of nations; withdrawal of the Allied forces from Russia; self-determination for Ireland, India, and all other parts of the British Empire; the restoration of civil and industrial liberties; the complete abolition of conscription; land nationalization; the immediate construction of a million new houses at

the state's expense; the strict maintenance of free trade; heavily graduated direct taxation on capital; immediate nationalization and public control of railroads and other vital public services; advanced labor legislation; and complete adult suffrage.

The arguments chiefly employed by Mr. Lloyd George against permitting a Labor victory were that the party did not represent labor as a whole, but only a section and a minority of it, and that its leadership was of pacifist and Bolshevist tendencies. Similarly, his arguments against a Liberal triumph were that the Asquith group, being no more numerous than the Liberals supporting the Coalition, had no right to pose as the Liberal party of former days, and that it was too barren of leadership and capacity to be intrusted with the nation's affairs.

In the Catholic portions of Ireland the issue was sharply drawn between the Nationalists and the Sinn Feiners. The former wanted home rule made effective; the latter would be satisfied with nothing less than the complete independence of an Irish republic. The campaign was exciting, and was attended with much disorder. The Sinn Feiners, whose rising strength had been evidenced in recent months by almost unbroken success in by-elections, decided to contest all of Ireland's 105 seats except five, and from the outset the tide obviously flowed in their favor. Their candidates made known their purpose, in the event of election, to abstain from attendance at Westminster; although some people felt that if Labor won a great victory it might make overtures which would lead the Sinn Feiners to take their seats with a view to coöperative action.

The campaign came to a close December 13 with a round of meetings almost up to pre-war standards, and on the following day the poll was taken for a total of 584 seats. One hundred and seven candidates had been returned unopposed; polling for the fifteen university seats began December 20; and in one constituency the poll had to be postponed on account of the death of a candidate. Already some four million voting papers, with a supply of envelopes and ballot boxes, had been distributed among the soldiers in the home camps and on the western front. At the close of the polling in the constituencies December 14 the ballot boxes were sealed and deposited by the returning officers in places of security, usually the district police stations. For two weeks these officers continued to receive the ballots—duly signed and witnessed—sent in by post, and also the votes cast by proxy. The count took place December 28. No separate record was kept of the votes cast by absentees, or by any other special group of electors. But

three or four facts seem fully substantiated: (1) not over 60 per cent of the registered electors actually voted; (2) as the Liberal and Labor leaders predicted, large numbers of the soldiers overseas could not, or did not, vote; (3) perhaps mainly owing to the shortness of time, the proxy system was made use of very sparingly; (4) contrary to the expectation of most preëlection observers, the women cast a heavy vote.

Under the circumstances comparisons with other elections are worth little. The outstanding feature of the results was the complete triumph of the Coalition. There was hardly room for doubt before the poll that the Coalition would win. But no one expected its margin of success to be so wide. Polling about five-ninths of the popular vote, it elected two-thirds of the house, having 472 seats, which means a clear majority of 240. The Asquith Liberals fared badly. The ex-premier and other leaders were defeated, and the party captured only 37 seats. Labor doubled its representation, with 65 seats. Yet this was by no means the showing that had been confidently predicted; and the three leaders, J. Ramsay Macdonald, Philip Snowden, and Arthur Henderson, were defeated. Forty-six non-Coalition Unionists were elected, and two or three minor groups won scattering victories. Ireland was swept by the Sinn Feiners, who won 73 seats, while the Nationalists retained but 7. Before the election the Nationalists had 78 seats and the Sinn Feiners 6. The only woman candidate elected in the United Kingdom is a Sinn Feiner.

Whatever else these results signified, they meant that the nation indorsed the government that had brought it successfully through the war, that it approved the Coalition's peace plans so far as they had been announced, and that it wanted peace negotiated by the men at present in office. It was significant that very few candidates of pacifist or Bolshevist inclinations pulled through. The results meant, too, that the Irish situation has reached a new crisis.

The premier repeatedly declared that the contest was not one of parties. None the less the party situation flowing from it cannot be ignored. Two important parties, the Liberals and the Nationalists, have been almost annihilated. Efforts to restore Liberal unity were futile before the elections, and there is room for doubt whether such unity will ever be restored. The leadership of the remnant is admittedly weak. There will be 164 Liberals in the new house of commons; but 127 of them were elected as supporters of the Coalition. In this connection it may be pointed out that not only is the Coalition's

quota predominantly Unionist (335 Unionists, 127 Liberals, and 10 Laborites), but the house of commons as a whole is Unionist by a margin of 53 seats. For the moment this majority is split into Coalition and non-Coalition wings. But it is patent that the era of Liberal rule inaugurated in 1905 is ended, that the nation has "gone Unionist," that Mr. Lloyd George—although presumably still a Liberal—must govern with ministerial colleagues and a parliamentary majority that are Unionist, and that he must reasonably meet the Unionist ideas or run the risk of being ditched. It is safe to predict that all will go smoothly until peace is signed. After that there will be several interesting possibilities. One of them will be the reversion of party government to its accustomed channels, with two great parties, Unionist and Liberal, practically dividing the electorate between them. A second will be the evolution of a durable center *bloc* consisting of tory Liberals and liberal Tories, flanked on one side by the arch-protectionist Unionists and on the other by the radical Liberals and by Labor. A third will be the restoration of the bi-party system, but with Labor—already raised to the rôle of "the Opposition"—in the place so long occupied by Liberalism.

Women Members of Parliament. Legislation supplementary to the British Representation of the People Act approved February 6, 1918, has lately made women eligible to sit in the house of commons. No sooner was the former measure, which enfranchised six million women, on the statute book than the question arose whether its effect was to make women eligible for election. The law officers of the crown held that no such right was conferred. Prospective women candidates, however, were not deterred; and the Labor party at once pronounced in favor of a bill to secure the desired object. The house of commons committed itself to the proposition October 23, when, by a vote of 274 to 25, it declared it desirable that such a bill be passed forthwith. Opposition was half-hearted. The assertion by one member that the house of commons was "not a fit place for any respectable women to sit in" roused only an involuntary burst of laughter from the ladies' gallery; even Mr. Asquith supported the motion as a natural corollary to the grant of votes to women earlier in the year. Such serious discussion as took place centered around the question of amending the bill so as to admit women to the various professions from which they are at present excluded. In the house of lords it was proposed that the measure be amended to enable peeresses in their own right to sit and vote in the

second chamber; but the view prevailed that this subject should be left for separate legislation, and on November 15 the bill as it came from the house of commons was carried through the final stages. At the elections in December one woman was elected a member of the house of commons.

It is of interest to observe that whereas women may vote at the age of thirty and upwards, the recent act fixes no age limit for election to the chamber. In Holland, however, women have no parliamentary votes at all, yet can become candidates for parliament; indeed, a school teacher of Rotterdam lately became the first female M. P. in that country. Women are eligible for election both to the Danish and to the Finnish parliaments; and at the 1916 elections in Finland 24 women, or 12 per cent of the total number of members, were returned. In Norway women are eligible not only for election to parliament but for appointment to the council of state or cabinet. No Norwegian woman has yet secured election to parliament, but some years ago one was chosen a deputy-representative. Two women were elected in 1917 to the legislature of the Canadian province of Alberta; but this has been the only instance of the sort in the history of the British Empire before the above-mentioned legislation. In this general connection will be recalled, of course, the election of the first female member of Congress in the United States in 1916.

Political Developments in Germany, 1917-1918. A former issue of the REVIEW (November, 1917) contained a résumé of German political affairs from the outbreak of the great war to the accession of Chancellor Michaelis, July 14, 1917. The summary will here be continued to the abdication of Emperor William II in November, 1918.

The appointment of Michaelis came at a time when the imperial government was under fire, both in the Reichstag and throughout the country. The Russian revolution and the entrance into the war by the United States had given a new impetus to the movement for political reform. The Reichstag had set up a special committee to consider electoral and other constitutional changes, and the debates had grown so violent as to lead to the prorogation of the chamber for a month. The emperor had publicly admitted the necessity of reform, but had insisted upon delay until after the war. The Center party, led by Erzberger, had joined the Radicals and the Social Democrats on a program of "peace without annexations," coupled with democratic constitutional reform. Confronted by this hostile *bloc*, the government had

agreed to carry out a reform of the Prussian electoral system before the next elections. And when this concession proved unavailing, Chancellor von Bethmann-Hollweg had resigned, the scapegoat of a government which was trying to stem the tide of public disapproval without actually departing from its policies.

Despite the hard conditions to which he fell heir, the new chancellor had some things in his favor. He was of bourgeois origin—the first such occupant of the office—and hence might hope for reasonably agreeable relations with the Reichstag majorities. His services as Prussian food controller had commanded considerable praise. And his freedom from party entanglements promised facility in dealing with all party elements. On the other hand, he was a bureaucrat of the sycophantic type so familiar in Prussia; he had no real sympathy with liberalism; like all of William II's chancellors, he was rather an exalted clerk than an originator of policy. From the outset his appointment was widely regarded as a mere stop-gap; and such it turned out to be. His earliest pronouncements in the Reichstag, which were awaited with keen interest, were either noncommittal or frankly reactionary. Though promising to call to the leading executive positions men who possessed "the confidence of the great parties in the popular representative body," he made it clear that "the constitutional right of the Imperial administration" to determine the national policies must not be curtailed. The expectation of many liberals that consultation with the Reichstag upon ministerial appointments would prove an entering wedge for a parliamentary system of government was not realized.

Michaelis's tenure lasted only three months. Revelations of mutiny in the navy, in October, 1917, forced the minister of marine, Admiral von Capelle, to resign and eventually caused the dismissal also of the chancellor. The successor in the more important office was the Centrist Count von Hertling, a Bavarian. This appointment was considered, in some quarters at least, a concession to liberalism; but no reason for such an interpretation subsequently appeared. During the winter of 1917–18 strikes were organized in Prussia as protests against the dilatory tactics of the government in dealing with electoral reform; but the only reply was a series of arrests of prominent Socialists. In the spring of 1918, indeed, the reform movement seemed to lose ground. Inspired with fresh arrogance by the humiliation of Russia in the Brest-Litovsk treaty, and by the success of the new "drive" on the western front, the Prussian reactionaries repudiated the emperor's pledges and carried, in the lower branch of the Landtag, by a vote of 235 to 183, a bill sub-

stituting an absurd six-class electoral system for the promised plan of equal suffrage. Another straw which showed which way the wind was blowing was the dismissal, in July, of foreign secretary von Kuehlmann as a punishment for saying publicly that Germany could no longer hope for a military victory, together with the appointment in his stead of the Pan-German Admiral von Hintze.

The last chapter in the history of the reform movement prior to the collapse of the Central Powers and the signing of the armistice of November 11 is the most curious of all. The tide of battle was now running strongly in favor of the Entente nations; German statesmen instinctively felt the end to be near; and dilatory discussion gave place to an earnest, even frantic, effort on the part of the imperial authorities to convince the world, and especially President Wilson, that reforms were under way which would speedily make the German government thoroughly democratic. In early September Chancellor von Hertling delivered a sensational speech before the ultra-conservative constitution committee of the Prussian upper chamber, ardently advocating electoral reform and in effect declaring that the survival of the Hohenzollern dynasty was at stake. At the reopening of the Reichstag, near the close of the month, he announced that the government was determined to carry out its program of reform, although a far-reaching alteration of the historical structure of Prussia and of the empire was not a thing to be hurried. Efforts to force the government's hand, however, led to the chancellor's retirement. The successor was another south German, Prince Maximilian, heir to the grand-ducal throne of Baden, who also entered office with a reputation for liberal views. In the new ministry were included three socialists, one of them, Philipp Scheidemann, without portfolio.

So far as words went, Germany now entered upon a new political era. On September 30 the emperor issued a proclamation affirming his desire that the German people should "co-operate more effectively than hitherto in deciding the fate of the Fatherland," and declaring his will that "men who are sustained by the people's trust shall to a great extent co-operate in the rights and duties of government." On October 2 the world was informed that the Prussian upper chamber had passed the franchise bill, so amended as to provide for direct and equal suffrage. Three days later the new chancellor declared in the Reichstag that electoral reform in Prussia must immediately be carried to completion; that "other German states which lag behind in their constitutional conditions" could be expected "resolutely to follow the Prussian example;"

and that the imperial constitution was to be amended so as to enable members of the Reichstag who "enter the Government" to retain their seats in the popular chamber, as do cabinet officers in England and France. All of these purposes were embraced in the announced program of the majority *bloc*, a combination whose backbone was the Center and which had been lately reënforced by the adhesion of the Liberal party.

The chief concern at Berlin seems to have been that President Wilson should be persuaded that the urgent correspondence concerning peace which was about to begin was with a government entirely different from that with which he had declared himself unwilling to deal. How sincere were the protestations made, how real the transformations wrought, will probably always be matters of speculation. The President's virtual demand for a popularization of the German government, first clearly made in the Mount Vernon address of July 4, was reiterated in a communication to Berlin under date of October 14. To this the foreign secretary, Dr. Solf, replied, October 21, that the imperial constitution had already been so modified that in future no government could "enter upon or carry on its work without possessing the confidence of the majority of the Reichstag." The responsibility of the chancellor, it was added, was being "legally extended and safeguarded." Finally, it was reported that the first act of the present government had been to submit a bill to the Reichstag "so amending the constitution as to make the approval of that body requisite for a decision on war and peace." Under date of October 23 the President declared that, "significant and important" as these constitutional changes seemed, it did not appear that the principle of responsible government had yet been fully worked out, or that any guarantees existed or were in contemplation that the "alterations of principle and of practice now partially agreed upon will be permanent." Five days later Emperor William proclaimed the constitutional amendment purporting to establish ministerial responsibility, and asserted that a new order now came into force which "transfers the fundamental rights of the Kaiser's person to the people."

Meanwhile the German military and diplomatic collapse was impending. The armies were everywhere being forced back; the invasion of German soil seemed only a question of time; power of resistance was fast ebbing; schemes to divide and weaken the Allies had failed; at home—even on the floor of the Reichstag—the Socialists were clamoring for a republic. The end came with unexpected swiftness. On November 9 the chancellor issued a proclamation announcing the purpose of

the Kaiser to abdicate, of the crown prince to renounce the succession, and of the chancellor himself to retire. During the next forty-eight hours, while the terms of the armistice prescribed by the Allies awaited acceptance, full control of affairs passed into the hands of a provisional government, under the leadership of Ebert as chancellor, and formed of members representing equally the Social Democratic and Independent Socialist parties. The ex-Kaiser took refuge in Holland; a dozen lesser German monarchs abdicated; new ministers took control in Bavaria and other states; and workmen's and soldiers' councils were organized in many cities. The first act of the provisional government was to accept the conditions of the armistice, November 11. Its next tasks, according to announcement, would be to negotiate peace and inaugurate economic reconstruction. Meanwhile it proposed also to arrange for a constitutional convention to work out for the former empire, as soon as conditions permitted, a permanent and democratic system of government. In December it was announced that elections to the constituent assembly—the first such body to be brought together in Germany since the "constituent Bundestag" which ratified the constitution of the North German confederation in 1867—would take place in January.

Discussion of political reform in the period under review moved, therefore, toward three main objectives: ministerial responsibility in the imperial government, popular control over war and foreign relations, and a new electoral system in Prussia. The first was nominally attained. The second was attained to this extent, that the Bundesrath approved an amendment giving the Bundesrath and Reichstag sole power to declare war except in a case where Germany should have been actually invaded or its coasts attacked. The third object was unattained when the collapse came, although a bill of substantially the sort desired had been passed by the Prussian upper house.

NOTES ON INTERNATIONAL AFFAIRS

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The Legal Liability of the Kaiser may be considered from the point of view of municipal law, of the law of war, and of international law; and under each of these laws it will be in order to discuss his offense, if any, the jurisdiction competent to try him, and the proper means for obtaining custody.

Under Municipal Law. The responsibility of the Kaiser under municipal law depends upon the criminal law of the state where the indictment is found. Lives lost through aerial raids and submarine attacks have been the subject of indictment in England. The coroner's inquest after the destruction of the *Lusitania* returned a verdict charging "the officers of said submarine and the Emperor and the Government of Germany under whose orders they acted with the crime of wholesale murder before the tribunals of the civilized world." In his opinion relieving the Cunard line of responsibility for the disaster, Judge Mayer, speaking for the United States district court for the southern district of New York, said on August 24, 1918: "The fault must be laid upon those who are responsible for the sinking of the vessel in the legal as well as the moral sense. . . . . The cause of the sinking was the illegal act of the Imperial German government acting through its instrument, the submarine commander, and violating a cherished and honored rule observed until this war by even the bitterest antagonists."

Criminal jurisdiction has been assumed on the territorial and personal theories, common law countries favoring the former. No country but Germany could have jurisdiction on the personal theory, whether domicile or nationality were the criterion. Since the passage of the Territorial Waters Jurisdiction Act in 1878[1] British criminal jurisdiction has extended to the three mile limit, and applying the usual rule that a crime takes place where it takes effect,[2] acts by Zeppelins or submarines, taking effect within those limits, would be indictable in Great Britain.

[1] 41–42 Vict. c. 73.

[2] U. S. v. Davis, 2 Sumner 482 (1873).

Although the sinking of the *Lusitania* took place outside the three mile limit, a British court might assume jurisdiction on an indictment based on this catastrophe, on the theory that the act was committed on a British vessel, a position sustainable by the opinions of Coleridge, C. J. and Denman, J. in the case of Regina v. Keyn,[3] though not by the opinion of the majority of the court.

An obstacle to the assumption of jurisdiction would result from the immunities which international law accords to sovereigns. Not only are reigning sovereigns exempt from suit[4] but persons subsequently amenable to suit are exempt from prosecution for acts done in their former sovereign capacity. In a suit brought by the duke of Brunswick against the king of Hanover, who was at the same time a British subject, the lord chancellor refused jurisdiction saying, "the courts of this country cannot sit in judgment upon an act of a sovereign effected by virtue of his sovereign authority abroad;"[5] and this has been affirmed in the United States by the dismissal of suits brought against the ex-president of the Dominican Republic and the ex-military governor of Bolivar, Venezuela, for acts done in their official capacities.[6]

In the few cases in which a sovereign has been made defendant in a national court, the jurisdiction has been created by extraordinary legislation, and the results have not been generally commended by historians. Mary Queen of Scots was tried for conspiracy against the life of Queen Elizabeth by a commission created by authority of a special statute[7] and whose jurisdiction she denied. "I am," she said, "an absolute Queen and will do nothing which may prejudice either mine own Royal Majesty or other princes of my place and rank or my son." A commentator has remarked that "after making every allowance in favor of the jurisdiction of the commissioners, nothing more disgraceful to our law than the trial of Mary Stuart can be found."[8] The trial of Charles I for "traitorously and maliciously levying war against the present parliament and the people therein represented" was under the jurisdiction of a similar special commission appointed by the "Rump" of the house of commons remaining after "Prides Purge." The *Encyclopaedia Britannica*

[3] L. R. 2 Ex. D. 63 (1876).

[4] Mighell v. Sultan of Johore, 1 Q. B. 149 (1894); DeHaber v. Queen of Portugal, 17 Q. B. 196 (1851).

[5] 2 H. of L. Cases, 1.

[6] Hatch v. Baez, 7 Hun. 596; Underhill v. Hernandez, 26 U. S. App. 573 (1895).

[7] 27 Eliz. c. 1 (1585).

[8] Willis-Bund, *State Trials* (1879), I, 264, 269.

characterizes the conviction as "an act technically illegal, morally unjustifiable and indefensible on the grounds of expediency."[9] Queen Christina of Sweden, against whom indignation was aroused by her execution of her favorite, Monaldeschi, in Paris, was simply expelled from France. Furthermore she had abdicated and it is recognized that ex-sovereigns enjoy no immunities for acts committed after abdication.[10]

After the Civil War, Jefferson Davis was indicted in the United States circuit court of Virginia for treason and for the "murder of Union prisoners of war and other barbarous and cruel treatment toward them."[11] After being held in military custody for over two years, while the United States courts in Virginia were awaiting the termination of military government, he was admitted to bail, and while a motion to quash the indictment, on which the circuit court was divided, was pending in the United States Supreme Court, he was released under the general amnesty of December, 1868.

Napoleon seems to have been thought liable to the jurisdiction of British courts after his abdication. Lord Rosebery tells us that "Admiral Keith (who had custody of Napoleon) was chased around his own fleet through an entire day by a lawyer with a writ on account of Napoleon."[12] For acts committed by a *de jure* sovereign in that capacity, however, the weight of authority clearly regards the jurisdiction of national courts of foreign states as incompetent, and even for those of a *de facto* sovereign as doubtful. Thus the reporter in the case of Jefferson Davis says: "Trials for treason in the civil courts are not remedies adapted to the close of a great civil war. Honor forbids a resort to them after combatants in open war have recognized each other as soldiers and gentlemen engaged in a legitimate conflict."[13]

A final difficulty in the way of a prosecution of the Kaiser under municipal law would arise should a neutral state give him asylum. It is recognized that no right of asylum exists on the part of the fugitive from justice. A state is competent to expel any undesirable resident, but it is not obliged to do so. Neither is it obliged to extradite him in the absence of treaty.

Grotius regarded it as "reasonable" that, inasmuch as a state would not permit execution of justice on its territory by a foreign state, it

[9] 11th ed., V, 911.
[10] Grotius, I, 4, 9; Vattel, IV, 7, 108; Satow, *Diplomatic Practice*, I, 7.
[11] 7 Federal Cases 64.
[12] *Napoleon, the Last Phase*, p. 59.
[13] 7 Federal Cases 66. See also Underhill v. Hernandez, *supra* note 6.

should give up upon application, or itself punish, the indicted person, and he refers to historical demands for the surrender of royalty.[14] Thus the Philistines are said to have demanded Samson of the Israelites;[15] Lucullus demanded Mithridates of Tigranes and made war upon his refusal to respond;[16] Rome demanded Hannibal of Carthage; Cato urged that Caesar be surrendered to the Germans for making an unjust war upon them;[17] and the Duke of Benevento is said to have favored the delivery of a Gascon prince to Ferdinand of Castile.[18] In modern times there appear to have been few if any requests for the extradition of sovereigns, and it seems probable that an act done by a sovereign in his official capacity would be regarded as a political offense and hence excepted by the terms of most extradition treaties.[19] The doctrine asserted by Attorney General Cushing in 1853, and repeated with approval by Secretary Seward after the executive extradition of Arguelles in 1864, that "the true position of the national obligation and authority for the extradition of criminals" was "defined and established by the law of nations" and hence, in the absence of a treaty executable by the President, that the sole consideration was whether the acts involve "heinous guilt against the laws of universal morality and the safety of human society and the gravity of the consequences which will attend the exercise of the power in question or its refusal," has not been followed or approved since.[20]

Though it is conceivable that an indictment against the Kaiser might be sustainable for crimes against municipal law, the competence of a national court to assume jurisdiction is at least questionable, and the right to demand his surrender by a neutral state seems lacking.

Under the Law of War. In ancient times it was regarded as an act of merit to kill the enemy ruler in battle, and the Roman custom of executing the captured king after the triumph, exemplified by the executions of Aristonicus, Jugurtha, and Artabasdus, was praised in the Panegyric of Constantine, "You have revived, O Emperor, that ancient boldness of the Roman Empire, which always put the generals of the

[14] *De Iure Belli ac Pacis*, II, 21, 4.

[15] *Judges*, c. 15.

[16] Plutarch, *Lucullus*.

[17] Plutarch, *Cato the Younger*.

[18] Grotius, op. cit., citing Marianna, 20: 1.

[19] In re Ezeta, 62 Fed. Rep. 972; Ornelas v. Ruiz, 161 U. S. 502. Treaties of Netherlands with France, 1844, art. 3; with Great Britain, 1874, art. 6; with United States, 1887, art. 3.

[20] Moore, *Digest*, IV, 250; For. Rel. (1894), p. 730.

enemy whom they had taken to death. For when the captive kings, after they had attended the triumphant chariots of the conqueror, from the gates to the Forum, as soon as ever he turned his chariot to the Capitol, were dragged to execution."[21]

The milder practice of making prisoners of war has, however, been extended to the enemy sovereign and, according to Vattel, "his person should be held sacred," except where he cannot be easily made a prisoner of war.[22] The practice of ransom led to occasional imprisonment of kings in the middle ages. Richard Coeur de Lion, held in Austria after his crusade and reported to have been discovered by his minstrel Blondel; John II of France captured by the Black Prince after Poitiers and voluntarily returning to die in captivity in order to save the honor of his son who had broken his parole to remain in England as a hostage until payment of the ransom; and Francis I of France, famous for his remark in a letter to his mother after his capture at Pavia by Charles V, "of all things nothing remains to me but honor and life," are familiar historical examples.

The right to make a captured enemy ruler prisoner of war is recognized by modern international law,[23] and is illustrated by the capture of Napoleon I, Napoleon III and Jefferson Davis. While capture accords the prisoner the privileges, it subjects him to the liabilities of that status. "A prisoner of war remains answerable for his crimes committed against the captor's army or people, committed before he was captured, and for which he has not been punished by his own army."[24] "In every case trial of individuals before military or other courts designated by the belligerent should precede punishment;"[25] "military jurisdiction is of two kinds, first, that which is conferred and defined by statute; second, that which is derived from the common law of war. . . . . In the armies of the United States the first is exercised by courts-martial, while cases which do not come within the Rules and Articles of War, or the jurisdiction conferred by statute on courts-martial, are tried by military commissions."[26]

Military commissions would thus have jurisdiction to punish enemy persons within their control for such offenses as "making use of poisoned

[21] Grotius, op. cit. III, 11, 7.
[22] III, 8, 159.
[23] U. S. Rules of Land Warfare (1914), art. 47.
[24] *Ibid.*, art. 71.
[25] *Ibid.*, art. 376.
[26] *Ibid.*, art. 16.

and otherwise forbidden arms and ammunition; . . . . . ill treatment of prisoners of war; . . . . . firing on undefended localities; . . . . . abuse of the Red Cross flag and emblem; . . . . . bombardment of hospitals and other privileged buildings; . . . . . poisoning of wells and streams; pillage and purposeless destruction; ill-treatment of inhabitants of occupied territory. . . . . The commanders ordering the commission of such acts, or under whose authority they are committed by their troops, may be punished by the belligerent into whose hands they may fall."[27]

As military jurisdiction is not terminated by the end of hostilities, or even by the end of war, and as it is not limited by the usual immunities of sovereigns, the liability of the Kaiser before a military commission seems clear.[28]

Efforts of a military commission to get control of an enemy ruler in a neutral state might be resisted on the ground that his offense, being political, was nonextraditable, though it appears that the fact of extradition being sought by military authority would not in itself be an obstacle.[29] The request for the extradition of a person liable to be made prisoner of war, however, might raise the question whether the neutral state would not be obliged to keep him interned for the duration of the war.[30] It appears that William Hohenzollern entered the Netherlands while emperor and commander in chief of the German armies, his final abdication being signed at Amerongen, November 28, nineteen days later.[31] If upon his entry the Dutch government was obliged to intern him, the duty would seem to continue until termina-

[27] *Ibid.*, art. 336. The British *Manual of Land Warfare* (art. 443) provides that a belligerent "may punish the offender or commander responsible for such order (under which members of the armed forces have committed violations of the recognized rules of warfare) if they fall into his hands." The immunity of the individual soldier who has committed illegal acts under order, though provided in both manuals, has been criticized as "contrary to the Anglo-American jurisprudence that the individual is personally responsible for his acts whether committed under order or not." *Jour. Comp. Leg. and Int. Law*, XVIII, 154. However, under the law of war, the responsibility of the superior officer seems to be sufficiently recognized.

[28] Cross v. Harrison, 16 How. 164; Lamar v. Brown, 92 U. S. 193; Magoon's Report, 16; Birkheimer, *Military Government and Martial Law*, 1st ed., p. 282.

[29] Neeley v. Henkel, 180 U. S. 109.

[30] Hague Conventions (1907), V, art. 11.

[31] The German Chancellor, Max of Baden, had published a manifesto November 9, 1918, stating that the "Emperor and King has decided to abdicate the throne." *Official U. S. Bulletin*, No. 460, p. 4.

tion of the war, or conclusion of an agreement between both belligerents and the neutral, even though his status had changed. The war is, of course, formally terminated not by the armistice but by the definitive treaty of peace. It is possible, however, that the terms of the armistice agreement might be interpreted as leaving neutrals free to release interned prisoners of war with the consent of the Allies.

Under International Law. The moral obloquy of the instigator of an unjust war was a favorite theme of the early publicists and is thus expressed by Vattel:[32]

"He is chargeable with all the evils, all the horrors of the war; all the effusion of blood, the desolation of families, the rapine, the violence, the ravage, the burnings, are his works and his crimes. He is guilty towards the enemy, of attacking, oppressing, massacring them without cause, guilty towards his people, of drawing them into acts of injustice, exposing their lives without necessity, without reason, towards that part of his subjects whom the war ruins, or who are great sufferers by it, of losing their lives, their fortune, or their health. Lastly, he is guilty towards all mankind, of disturbing their quiet, and setting a pernicious example."

Grotius however, had recognized that "a king who undertakes a war upon frivolous reasons or to inflict some needless punishment," though responsible to his own subjects, "can not be accused with any injury done to his enemies;"[33] and this view, however incompatible with the solidarity hoped for in a league of nations, is still accepted. "The law of nations allows every sovereign government to make war upon another sovereign state," and "a prisoner of war is subject to no punishment for being a public enemy."[34]

Various crimes against international law are, however, recognized. Aside from violations of the law of war, assaults upon diplomatic officers, assassination of heads of state, violations of neutrality, and piracy have been so characterized. Piracy has been suggested as a charge against the Kaiser, but though the acts of submarines might come under that offense as defined in some national codes, they could hardly be described as devoid of any public authorization, a condition necessary to constitute piracy, *jure gentium*.[35]

[32] III, XI, 184.
[33] II, 24, 7.
[34] U. S. Army, General Orders No. 100 (1863), arts. 56, 67.
[35] U. S. v. Baker, 5 Blatch. 6 (1861); Hall, *International Law*, sec. 81.

A breach of faith by a state, as in the unilateral abrogation of a treaty, is recognized as an offense against international law, and, in the case of an absolute government, has been held to render the sovereign personally responsible. It was partly on this ground that the first Napoleon was imprisoned at St. Helena. A declaration of the Congress of Vienna, signed on March 13, 1815, by Austria, France, Great Britain, Portugal, Prussia, Russia, Spain, and Sweden, and affirmed, in accordance with an elaborate report of a special commission, on May 12, 1815, by those powers with accession of Bavaria, Denmark, Hanover, Netherlands, Sardinia, Saxony, the two Sicilies, and Wurtemburg, after referring to the return from Elba, states:[36]

"By thus violating the convention which had established him in the Island of Elba, Bonaparte destroys the only legal title on which his existence depended. . . . . The powers consequently declare that Napoleon Bonaparte has placed himself without the pale of civil and social relations and that as an enemy and a disturber of the tranquility of the world he has rendered himself liable to public vengeance."

On July 9, 1815, after Waterloo, Napoleon was ordered by the provisional government to leave France within twenty-four hours, and on July 15, finding escape hopeless, he voluntarily boarded the British ship *Bellerophon*. He was detained as a prisoner of war; and on August 2, 1815, a convention between Great Britain, Austria, Prussia, and Russia, declared that Napoleon Bonaparte was considered to be the prisoner of the signatories of the alliance of March 25, 1815, which included sixteen powers, and his custody was especially intrusted to the British government.[37] On October 17, 1815, he was taken to St. Helena on the British ship *Northumberland;* and on April 11, 1816, Parliament passed an act[38] authorizing the government "to detain . . . . . the said Napoleon Bonaparte in the custody of such person . . . . . and in such place within his Majesty's dominions and under such restrictions" as it saw fit, and to treat him as a prisoner of war. Lord Castlereagh, the premier, explained that the bill was introduced because of doubt of the competency of the government to detain him as a prisoner of war after the termination of war, though he himself felt no such doubts, and added:[39]

[36] British and Foreign State Papers, II, 665, 734.
[37] *Ibid.*, III, 200.
[38] 56 George III, c. 22.
[39] *Hansard's Debates*, XXXIII, 213 (March 12, 1816).

"As a sovereign Prince, we were warranted in detaining him, in consequence of his breach of treaty, and incapacity to afford any guarantee for the observance of any treaty; but we had this additional ground to justify our conduct, that he was a prisoner of war, who, as a native of Corsica, was a subject of France, which power had declined to claim his restoration. . . . . Thus whether regarded as a sovereign Prince, or a prisoner of war, his detention was justifiable in a technical view, according to the law of nations, and that detention was imperiously called for by a due consideration for public safety and general peace."

Lord Brougham, of the opposition, was in agreement. Lord Liverpool, in a letter to Lord Eldon, offered a slightly different justification. Napoleon, he said, "must then either revert to his original character of a French subject, or he had no character at all, and headed his expedition as an outlaw and an outcast—*hostis humani generis.*"[40]

Lord Castlereagh's charge, if not Lord Liverpool's, could doubtless be maintained proved against the Kaiser on the basis of the historic "scrap of paper." In awarding judgment on high political offenses, however, considerations of legal responsibility cannot be separated from those of political consequences. Though considerations of the latter type may have weighed too exclusively with the Congress of Vienna which condemned Napoleon, and with the British government which executed the sentence—Lord Rosebery indeed finds the subject a poignantly painful memory for Englishmen—yet the procedure has been less stigmatized than that in similar cases tried before tribunals of less extensive jurisdiction.

Trial of the Kaiser under international law by a tribunal whose jurisdiction was sanctioned by neutral states, including that in which he was seeking asylum, as well as by the principal belligerents, would avoid the difficulties of jurisdiction, sovereign immunities and extradition, and would offer the greatest probability of a decision at once just and expedient.

QUINCY WRIGHT.

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The Armistices. War may terminate by conquest and absorption of one of the parties, by mere cessation of hostilities, or by treaty of peace. The last method is by far the most frequent and has usually required

[40] Rosebery, op. cit., p. 58.

three steps: an armistice, a preliminary treaty of peace and a definitive treaty of peace. Sometimes, as in 1815 and 1878, these have been supplemented by a general conference to frame treaties redefining the bases of world organization. Occasionally, as in the war between the United States and Great Britain in 1812, the Mexican war of 1846, the Russo-Japanese war of 1904–1905, and the Turco-Italian war of 1913, the first two steps have been omitted, the definitive peace being signed before cessation of hostilities. Again the first step has sometimes been omitted, as in the Spanish-American war, the armistice being included in the preliminary treaty of peace.

An armistice, strictly speaking, implies merely a cessation of arms for a limited or indefinite period, with approximate maintenance of the existing condition of relative strength. It is distinguished from a suspension of arms by its greater generality and duration and from a capitulation by being "an essentially bilateral transaction, giving mutual concessions and imposing mutual restrictions."[1] The so-called armistice between France and Prussia of January 28, 1871, included provisions relating to indemnity, delivery of French forts, and disbanding of the French armies, thus going beyond the scope of a simple armistice.

By the instrument signed September 29, 1918, by Great Britain, France, Italy and Bulgaria, hostilities were to cease at noon, September 30, and Bulgaria was to evacuate occupied territory, to demobilize her army and surrender portions of it, to deliver war material and means of transport, and to compel the departure within a month of German and Austrian military, diplomatic, and consular agencies. The Allies were given the control of the navigation of the Danube, the right of free passage through Bulgaria for military operations, and the right to occupy strategic points. Bulgaria was, however, permitted to reoccupy certain territory occupied by Allied forces.

Turkey and the Allies signed an agreement October 30, 1918, to cease hostilities from noon, local time, October 31, 1918. In addition, Turkey was to demobilize her army except troops necessary for the maintenance of order, to surrender all war vessels in Turkish waters except those required for police purposes, and to evacuate specified territories. Turkish garrisons in Arabia and officials in Tripolitania and Cyrenaica were to surrender to the Allies, and Allied prisoners of war were to be released without reciprocity. The Dardanelles and Bosphorus were to be opened, and Turkey was required to remove mines. The Allies were

[1] Phillipson, *Termination of War and Treaties of Peace* (1916), p. 67.

given the right to occupy strategic points in Turkey, including the forts of the Dardanelles and Bosphorus.

Austria-Hungary signed an armistice with the Allies and the United States, November 3, 1918, to take effect at 3 a.m. November 4, providing for the immediate cessation of hostilities by land, sea and air. Austria-Hungary was in addition required to demobilize her army, to deliver half of her military equipment, a large part of her navy and submarines and all merchant vessels belonging to the Allies, to evacuate occupied and other specified territory, and to repatriate Allied prisoners of war without reciprocity. German troops were to be evacuated and the Allies were given the right of transit and of occupying strategic points in Austria-Hungary. The blockade conditions and rights of capture at sea were to be unaffected. The Allies and the United States were given the right of free navigation on the Danube and the occupation of defined territory, including Trentino, Küstenland, and Dalmatia. The administration of these territories was "intrusted to the local authorities under the control of the allied and associated armies of occupation."

Germany signed an armistice with the Allies and the United States, at 5 a. m. French time November 11, 1918, providing for the immediate cessation of hostilities at sea and cessation of operations by land and in the air, six hours after signature. The terms, as laid down by the Versailles Conference of the Allies and the United States, in thirty-six articles, were read by President Wilson in his address to Congress on November 11, with the comment: "The war thus comes to an end, for having accepted these terms of armistice, it will be impossible for the German command to renew it." Under authority given them, Marshal Foch and the other negotiators agreed to alterations in the details of eighteen of these articles prior to signing. Later agreements have extended the period of evacuation and the duration of the armistice. On December 14, the Allies announced that they reserved the right to occupy the neutral zone east of the Rhine and north of Cologne on giving six days notice.

Germany was required to deliver specified ordnance, aircraft, transport material, battleships, submarines, and all Allied, Russian, and neutral vessels, the numbers being in some cases altered during the armistice negotiations; to evacuate all invaded territory, East Africa, the territory west of the Rhine, and territory to a specified distance[2] east

[2] Originally 40 kilometers, modified during the negotiations to 10 kilometers. The original provision for Allied occupation of a 30 kilometer radius at the

of the Rhine, within specified periods, without injury to the inhabitants or industries; to repatriate Allied civilians and prisoners of war without reciprocity; to renounce the treaties of Bucharest and Brest-Litovsk and to recall all "instructors, prisoners and civilians as well as military agents" in the territory of Russia as defined before 1914. The Allies were given free access to the Baltic and to the territory east of Germany, through Dantzig or by the Vistula. The blockade conditions and rights of capture at sea were to remain unaltered for the Allies but Germany was required to notify neutrals that she no longer placed restrictions upon their trade with allied and associated countries.

The armistice terms, as read by the President, called for: "Immediate evacuation of invaded countries—Belgium, France, Alsace-Lorraine, Luxemburg" (Art. 2); but the official text was worded: "Immediate evacuation of invaded countries—Belgium, France, Luxemburg, as also Alsace-Lorraine." A presumption as to the future status of Alsace-Lorraine may, however, be drawn from the exclusion of these provinces from the provision charging Germany with the "upkeep of the troops of occupation in the Rhineland." (Art. 9.)

Among the additions made during the negotiations was the provision that "in all territories evacuated by the enemy . . . . . no person shall be prosecuted for offenses of participation in war measures prior to the signing of the armistice." (Art. 6.) A time limit of 48 hours was added to the requirement that Germany be responsible for revealing and aid in the discovery and destruction of all mines or delayed action fuses in evacuated territory. This article also required the revelation of poisoned and polluted wells, etc., all sanctioned by penalty of reprisals. (Art. 8.)

The alterations took cognizance of the conventions for exchange of prisoners of war by annulling them, but the Allies agreed to continue repatriation of German prisoners interned in Holland and Switzerland. (Art. 10.)

The original requirement for the immediate evacuation of German troops in Russia as defined before 1914 was altered to read "As soon as the Allies, taking into account the internal situation of these territories, shall decide that the time for this has come." (Art. 12.) The requirement for "unconditional surrender," within a month, of German

bridgeheads at Mayence, Coblentz and Cologne was, however, retained and by agreement on December 14, 1918, the Allies were given the right to occupy the territory east of the Rhine and north of Cologne, which had been declared a neutral zone.

forces in East Africa was modified to "evacuation within a period to be fixed by the Allies." (Art. 17.)

Although blockade conditions were to remain unchanged, it was agreed during the negotiations that "the Allies and the United States should give consideration to the provisioning of Germany during the armistice to the extent recognized as necessary." (Art. 26.)

Acceptance or rejection of the armistice within 72 hours was required and its duration was thirty days with option to extend, a condition formally complied with on December 14. An addition to the original terms provided that failure to carry out the evacuation in the period fixed should not be regarded as grounds for denunciation except in case of bad faith. (Art. 34.)

All four instruments not only specified the time of cessation of hostilities, but also imposed conditions calculated to put the Central Powers *hors de combat*, such as demobilization of armies, surrender of arms and transport material, occupation by the Allies of strategic points, etc. In addition certain *ante bellum* conditions were established by the provisions relating to withdrawal from occupied territory, Belgium, France, Luxemburg, Tripolitania, Cyrenaica, Persia, etc. Some territorial and political changes were perhaps presaged by the provisions relating to the Turkish straits, the Danube, Arabia, Italia Irredenta, and Alsace-Lorraine. Thus each of the instruments, besides providing for an armistice, contains elements suggestive of a capitulation and a preliminary treaty of peace. It is noteworthy, however, that the form of an armistice is carefully preserved in the agreement between the Allies and Germany. In that alone, demobilization of troops is not specified, denunciation of the armistice is provided for, and the principle of an international armistice commission is admitted. This much concession was made to the *amour propre* of the master state of the Central Alliance, though the true character of the transaction was evidenced by the final qualification that the international armistice commission "will act under the authority of the allied military and naval Commanders in Chief." (Art. 34.)

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NEWS AND NOTES

Personal and Miscellaneous

EDITED BY FREDERIC A. OGG

University of Wisconsin

A meeting of the executive council of the American Political Science Association and the board of editors of The American Political Science Review was held at Baltimore on December 27. After careful consideration, it was voted that no general meeting of the Association should be held before the usual time for the annual meeting in December, 1919. This action was taken on account of doubt whether two successful meetings could be held within one year, considering the adverse conditions of transportation during demobilization and the unsettled state of the public health. It was the sense of the council that the officers should hold over until the annual meeting in 1919. Two vacancies in the council, caused by the death of Professor F. A. Updyke and the resignation of Mr. A. H. Snow, were filled, until the annual meeting, by the election of Professor H. M. Bowman of Boston University and Theodore Marburg of Baltimore. Professor J. D. Barnett of the University of Oregon and Mr. C. C. Williamson of the New York Public Library were elected members of the board of editors, succeeding Mr. Herbert Croly and Mr. John A. Lapp.

Frank A. Updyke, Ira Allen Eastman professor of political science in Dartmouth College, died suddenly at his home in Hanover, on September 20. He was born in 1866, and was graduated from Brown University in 1893. After some years spent in teaching the classics, he turned to the field of political science and from 1904 to 1906 he was engaged in graduate study, at the University of Chicago, University of Geneva and Brown University, taking his doctor's degree at the latter institution in 1907, and going to Dartmouth the same fall. During the summer of 1913 he was professor of political science at the summer session of the University of Michigan, and in 1914 he was Albert Shaw lecturer on American diplomatic history at Johns Hopkins University. In 1912 and

again in 1918 he was elected a member of the New Hampshire constitutional convention. He was the author of *The Diplomacy of the War of 1812; County Government in New England;* and *Short Ballot Suggestions for New Hampshire.* He was a frequent contributor to the REVIEW and at the time of his death was a member of the executive council of the Association. In 1894, he was married to Miss Cornelia Parish of Delevan, Wisconsin, who survives him. His untimely death, in the full maturity of his rich powers and broad sympathies, is a great loss to the college and to the profession.

Dr. Eldon C. Evans, instructor in political science at Dartmouth College, died of pneumonia, after a brief illness, on September 26.

Professor R. G. Gettell has resigned as historian of the United States Shipping Board, and has resumed his courses at Amherst College. His successor at Washington is Dr. J. G. Randall, formerly professor of history and economics at Roanoke College.

Professor J. Allen Smith, of the University of Washington, is giving courses this year at Stanford University. His work at Washington is temporarily in charge of Professor James D. Barnett of the University of Oregon.

Professor Ernest Barker, of Cambridge University, England, will lecture at Amherst College during the second half of the present academic year. He will discuss phases of political theory.

Professor Charles E. Merriam, of the University of Chicago, who returned in November from work in Italy for the committee on public information, has announced his candidacy for the Republican nomination for mayor of Chicago. Professor Merriam was the Republican candidate for mayor in 1911.

Professor Karl F. Geiser, of Oberlin College, has been granted a Carnegie teacher's fellowship for the study of international law and related subjects. He is carrying on his work at Harvard University, under the direction of Professor G. G. Wilson. His chief subject of investigation is plans for international organization.

The work of the new School for Social Research in New York opens on February 22. Among courses to be offered is one on representative government, in charge of Dr. H. J. Laski of Harvard University, and one on problems of American government, given by Dr. Charles A. Beard of the New York Bureau of Municipal Research.

Dr. John E. Briggs has been appointed instructor in political science at the University of Iowa.

During the current year there is connected with the department of political science at the University of Iowa a research associate, Mr. B. B. Bassett, who is making a study of problems connected with education for citizenship.

Mr. Graham H. Stuart, formerly a student at the École des Science Politiques, acted as an instructor in political science at the University of Wisconsin during the first quarter of the present academic year. He has lately assumed an assistant secretaryship of the Wisconsin branch of the League to Enforce Peace.

Professor Stanley K. Hornbeck, on leave of absence from the University of Wisconsin, was one of the four officers of the military intelligence service included in the party of experts which accompanied President Wilson to France in December. Professor Amos S. Hershey of Indiana University is also with the Peace Commission in the capacity of assistant to Major James Brown Scott, technical adviser on international law.

Godfrey Rathbone Benson, first Baron Charnwood, lectured at a number of American colleges and universities during the first quarter of the year. His principal subjects were "Abraham Lincoln" and "Great Britain's Relation to a League of Nations." At Cornell University he gave a course of fifteen lectures, on the Jacob H. Schiff Foundation, on the general subject of the contributions of the British Empire to civilization.

A "win-the-war" convention, called by the University of Wisconsin in coöperation with the League to Enforce Peace, was held at Madison November 8–10. A state branch of the league was organized. Among the addresses were: "A League of Free Nations," by President Charles

R. Van Hise; "Winning the War in France," by Hamilton Holt; "German Autocracy," by Franz Sigel; "The Ethics of the War," by Professor Shailer Mathews; "America in the War," by William H. Taft; "Safeguarding the Future," by President A. Lawrence Lowell; "Labor's Aims in the War," by John P. Frey; and "Socialism and the War," by A. M. Simons.

The thirty-eighth annual meeting of the Academy of Political Science in the City of New York was held December 6–7. The meeting took the form of a conference on war labor policies and reconstruction. The several sessions were devoted to women in industry, war labor standards and reconstruction, adjustments of wages and conditions of employment, demobilization of labor in war industries and in military service, and industrial victory and its effect on the future of labor and capital. The addresses and discussions will be published as a volume of the Academy's *Proceedings*.

At the election of November 5 the voters of the state of Illinois ratified, by a majority of approximately fifty thousand, a proposal for a convention to revise the state constitution. The new general assembly, which convened in January, is expected to fulfill its constitutional duty by passing an enabling act fixing the date for the assembling of the convention, prescribing the method of electing the 102 delegates, fixing their compensation, and making an appropriation for the convention's expenses.

Mrs. Frances F. Preston (formerly Mrs. Grover Cleveland) asks that the following notice be printed in the REVIEW:

"I should be grateful if friends of Mr. Cleveland who possess published addresses or other critical comment of historical value concerning his policies or character, or letters to or from him, or personal recollections of incidents connected with his life, which would be of interest in the preparation of a biography, would communicate as soon as practicable with Mr. William Gorham Rice of Albany. Any such comment, letters, and accounts of incidents will be acknowledged and will be carefully returned if the sender so desires. It is my hope that Mr. Rice, aided by such material and by his own already existing collection, may feel disposed to undertake a biography of Mr. Cleveland during the ensuing year. Mr. Rice was a secretary to Governor Cleveland in Albany and was later, by President Cleveland's appointment, a

United States Civil Service Commissioner at Washington, and is now a New York State Civil Service Commissioner. He was associated with Mr. Cleveland from 1882 onward, and was always an esteemed and devoted friend."

The National Civil Service Reform League has called for the reorganization of the United States civil service commission on the ground of the "inherent incapacity" of its present members for the reconstruction work in prospect. The league has a committee on investigation and reconstruction at work in Washington, headed by Richard H. Dana, president of the league, and Ellery C. Stowell. Various phases of reported administrative inefficiency are being inquired into by subcommittees of this main committee. The first reports to be submitted were from a subcommittee detailed to investigate the civil service commission. The league's recent statements point to the greatly extended activities of the government and the likelihood that in the reconstruction period there will be need for many thousands of additional employees. If public administration is to be handled efficiently the civil service commission, it is asserted, must be made the employment department of the government, with complete control of personnel. The subcommittee's recent reports state that the present commission has demonstrated its incapacity for such a task. It will be remembered that the league clashed with the commission in 1916, during the presidential campaign, over the commission's refusal of access to the records of appointments to fourth-class postmasterships. The league desired to inspect these in connection with reports that many such appointments had been made for partisan purposes. During the war the league was silent, and it coöperated with the commission. But now that the war is over, it seeks to have the present commissioners replaced. It points out that the commission failed to take a broad view of its responsibilities in recruiting emergency employees for the departments, with the result that many departments either suffered through lack of employees or were permitted to recruit without reference to the civil service law, the latter course entailing much inefficiency and some serious abuses. The commission is charged also with inefficiency and partisan manipulation prior to the war.

A conference was held at Rochester, November 20–22, under the auspices of the National Municipal League for the consideration of American reconstruction problems. The principal papers read were: "The

New Relation of the Federal Government to State and Local Communities," by Professor H. L. McBain of Columbia University; "Public Employment," by Dr. Charles A. Beard, of the New York Bureau of Municipal Research; "The Government, Present and Future, of Communities," by Mr. R. S. Childs, of the Housing Bureau of the Department of Labor; and "Replanning the United States in regard to Transportation, Housing, and Public Works," by Mr. F. L. Ackerman. The conference adopted a platform generally favorable to retention in the hands of the government of the special powers and functions acquired during the war. The following are some of the specific recommendations:

1. The government has assumed control of railroads, telegraphs and telephones, opening the opportunity for either federal ownership, with private operation, or federal ownership with federal operation, or a reorganization by economical regional systems under a method of control that will protect private capital by insuring a reasonable return, yet removing speculative and antisocial features of the private ownership of the past with its relatively feeble and negative scheme of regulation. Whichever principle is adopted is a smaller matter than that the essential features of our present control should never be relinquished.

2. The federal government through its food and fuel administrations and its war industries board has acquired a command over basic resources which played a vital part in securing national efficiency. Every effort should be made to preserve the nucleus of these valuable agencies in such form and with such powers that we may achieve some part of that efficiency in peace.

3. The federal government has manifested grave interest in, and has exerted its war powers to influence, the cost of living and the prevention of profiteering. It should continue to exert its peace powers toward the same beneficent end.

4. The federal government has concerned itself effectively in the problem of housing industrial workers and has placed upon a new basis of prestige and authority the American movement for garden cities and suburbs. Its interest in this aspect of the welfare of the workers and the efficiency of industry should not now lapse; but the labor department's bureau of industrial housing should be continued and its powers broadened to include educational work and research into our vast industrial housing problems.

5. As a measure of protecting the effectiveness of its soldiers and industrial workers, the federal government has found it necessary to use

its influence with local governments regarding moral and health conditions. Such federal interest in local governments should not lapse, but should result in the continued attack upon vice problems by the public health service and in the formation of a federal bureau of municipalities in the department of the interior to collect and distribute information on municipal problems.

BOOK REVIEWS

EDITED BY W. B. MUNRO

Harvard University

The Evolution of the Dominion of Canada. Its Government and Its Politics. By EDWARD PORRITT. (New York: World Book Company. 1918. Pp. 540.)

This is a thorough and comprehensive study of the evolution of Canada. In the book there is the bias of the extreme free trader and possibly many Canadians will regret that a treatise of such historical value should be distinguished by uncompromising and consistent economic propaganda. Its highly controversial character and complete identification with one school of fiscal thought in Canada will affect its authority with many Canadians on other questions which are treated with detachment and insight. Unquestionably, as Mr. Porritt suggests, dissatisfaction over the abrogation by Washington of the Reciprocity Treaty of 1854 and concern over the attitude of the United States at the close of the Civil War assisted the movement for confederation, as high American duties upon Canadian products and manufactures stimulated protectionist sentiment in the Dominion. For many years both political parties in Canada were eager to negotiate reciprocity treaties with the United States, and the rejection of all these advances partly explains the defeat of the Laurier government in 1911, when at last a reciprocal trade agreement was accepted by Washington. Moreover, for fifty years Canada was required to develop systems of transportation to carry trade north and south and to seek ultimate markets in Great Britain, with the result that a reversal of policy such as the trade agreement of 1911 involved would have vitally affected established conditions in Canada.

It is a common belief in the Dominion that national considerations rather than the influence of manufacturers explain the adoption and the maintenance of protection. One is bound to think that Mr. Porritt greatly exaggerates the corrupt power of industrial and financial interests in the life of Canada. It may be that one probable finance minister was set aside owing to his attitude towards these interests;

but that they have generally nominated the minister of finance cannot be accepted. Indeed, most of the finance ministers of Canada since confederation have not been highly regarded by the business and financial interests and certainly were not the men they would have chosen for the portfolio. It is true that Canadian manufacturers oppose free trade with Great Britain. But it is not true that they have "never disguised their hostility to the British Preference." Over and over again the Canadian Manufacturers' Association has adopted resolutions in approval of preference, although it must be admitted that they were not too favorable to the increase of the preference from 25 to 33⅓ per cent. Of course the manufacturers are protectionists for Canada as they doubt the wisdom of free trade in Great Britain. A statement ascribed to Mr. G. M. Murray, secretary of the Canadian Manufacturers' Association, "that by the exercise of its power, the Association could, if it chose, bring several millions of people to the verge of starvation and paralyse the industry of the whole Dominion," he denies that he ever made, and those who know Mr. Murray will accept his denial.

In Mr. Porritt's story of the growth and final achievement of responsible government in Canada, he overlooks Joseph Howe of Nova Scotia. Howe, perhaps more than any other man, fought out that battle with the colonial office and prevailed without violence, while in Upper Canada and Lower Canada victory was not achieved without rebellion. There were other men as distinguished in the movement for confederation as Galt, and far more wise and practical in council and in action. Brown, Macdonald and Cartier were more necessary than was Galt to the project of union. Without the first three, confederation could not have been achieved when it was, but whether Galt was there or not was not so material.

Mr. Porritt understands the Canadian senate. In the main it has been ineffective and unfruitful. But it is not contemptible, and now and again it has done valuable national service. From the first, however, partisan considerations have dictated appointments, and at times undoubtedly the prospect of appointment to the senate has affected the independence of members of the house of commons. Sooner or later the constitution of the senate will be altered, and when reform comes the system of life appointment by the prime minister will disappear. Mr. Porritt makes the curious statement that "old party war horses" and men who need an income are appointed lieutenant governors of the Provinces. The truth is that men who have incomes are

sought for these positions, and it is seldom that a lieutenant governor does not have to spend two or three times the amount of his official salary. But the general accuracy of Mr. Porritt's volume cannot be challenged. It covers much ground and in all that relates to the constitutional history of the Dominion and the development of relations with the Mother Country it is illuminating and authoritative.

JOHN WILLISON.

Toronto, Canada.

Documents of the Canadian Constitution. Selected and edited by W. P. M. KENNEDY. (Toronto: The Oxford Press. 1918. Pp. 707.)

The title of this volume is apt to mislead the unwary. The book does not contain, as its title might imply, a collection of documents relating to the present governmental system of Canada. The greater portion of it is devoted to materials illustrating the development of Canadian government in the period between the close of the French régime and the enactment of the Act of Confederation in 1867. Among the materials included are acts of parliament, ordinances, petitions, reports, decisions of courts, treaties, extracts from parliamentary debates and correspondence. All are arranged in chronological order. Aside from brief historical notes inserted at a half-dozen places in the book, no attempt is made to interpret the documents or to appraise their relative importance.

In the selection of materials for inclusion in his volume the editor has in more ways than one proved himself a strict constructionist. His interpretation of Canadian constitutional history lays great stress (and perhaps rightly so) upon the course of relations between the imperial and the colonial authorities, also upon the bickerings which went on for so long a time between the executive and legislative branches of government in Canada. So much attention is given to these things, however, that very little heed is paid to the social and economic backgrounds of constitutional evolution although these were, after all, far more important in determining the general course of events than were the foibles or fads of either colonial secretaries or local governors. It is somewhat strange in this day and generation to find an historical scholar interpreting constitutional history in terms so distinctly political and personal, with relatively little heed to those economic factors which have had a profound influence in Canada as everywhere else.

Canada, one might judge by this volume, is composed of two provinces, formerly known as Upper and Lower Canada, but now called Ontario and Quebec. At any rate the contribution of the maritime provinces to the winning of responsible government for the Canadian people (and it was of considerable extent) is given no adequate recognition. Nor, with the exception of two federal statutes, does the book contain any documents illustrating the development of free government in that vast expanse of modern Canada which lies beyond the Great Lakes. Yet the story of how this great tract was acquired, how it was organized into territories and how it was finally parceled into provinces is not the least interesting chapter in the history of empire building.

In spite of these limitations, however, Mr. Kennedy has compiled a useful book. He has brought together a great many documents which have not hitherto been available save in out-of-the-way places and has put them together with a great deal of care.

W. B. M.

Cambridge, Mass.

Government and Politics of Switzerland. By ROBERT C. BROOKS. (Government Handbooks, edited by David P. Barrows and Thomas H. Reed. Yonkers: World Book Company. 1918. Pp. xvi, 430.)

The purpose of this volume is to provide a textbook for students of political science and at the same time attract the attention of the general reader who may be visible in the offing. The author is an enthusiastic admirer of Swiss institutions and a professor in an American college. Comparisons between the two countries are constantly in evidence. Even when no parallels are drawn in words the descriptions distinctly presuppose an American background. No better combination of sentiment and method could be devised to bring out the salient features of Swiss government, for the likenesses are so strong that the differences stand out in high relief. We scarcely need the express declarations of the writers of 1848 that the American Constitution was consciously before them, so conclusive is the internal evidence.

Descriptions of the little republic need to be renewed at intervals, for Switzerland is a progressive state and its laws are not written on tablets of bronze. The voters do not always do the logical thing, but they eventually correct their mistakes and the adoption of improvements marches on. Even while this book was passing through the

press the people voted to adopt proportional representation for the lower house of its national legislature, a question which the author had to describe as "pending." Indeed, it seems but a short time since the railroads of Switzerland became national property, but, as a matter of fact, the government has already had experience enough to give us good advice.

All this in justification of the new book. Many more reasons are furnished in the editorial preface where have been assembled the facts most useful for reviewers who do not read the rest. The author would not have suffered if most of this part had been omitted.

The plan of the work is well suited to purposes of study. Each chapter is followed by references to standard writers on Switzerland where the reading may be extended, and an elaborate critical bibliography will be useful to teachers and others who may desire to follow foreign authorities as well. The historical chapter is severely compact, but the book is avowedly descriptive of the present, and the combination of constitution, law, political parties, and actual practice has been skilfully wrought.

Johns Hopkins University. J. M. VINCENT.

Modern and Contemporary European History. By J. SALWYN SCHAPIRO, under the editorship of James T. Shotwell. (Boston: Houghton, Mifflin Company. 1918. Pp. 805.)

Discussions of recent European history, brought substantially up to date, were needed more than ever as soon as the United States entered the world war. This book was written to meet this demand and provide a text which should bring the courses in this field as far as possible through the period of the war.

After an introduction upon the revolutionary and Napoleonic era, ten chapters (approximately 220 pages) carry the reader through to the end of the Franco-Prussian War, and the development of European states up to the outbreak of the world war is covered in nearly five hundred pages. The study of the world war through Brest-Litovsk (1918) takes up the last chapter of about forty-five pages.

Dr. Schapiro's book differs from other recent publications in throwing much more emphasis on the period since 1870, and particularly upon very recent events. It brings us down to the world war much more rapidly. It also is larger, containing nearly eight hundred pages, or a hundred or so more than the average text. More space than usual is assigned to government and politics, and probably one-fifth of the

whole pagination is devoted to industrial, economic, and cultural topics. The chapters on the industrial revolution (III), on old England (IV), revolutionary labor movements (XXIV), and science (XXVI) have very little of the political, and two of the maps are upon economic subjects (industrial England and industrial Germany). The author has also introduced literary men of the first order like Thackeray and Hugo, and these cultural features are based "on a fair degree of familiarity gained from an affectionate study of the literature and art of modern and contemporary Europe."

There is a choppy effect to the chapters connected with the world war, due probably to haste in writing and scant opportunity for generalizations so soon after the events catalogued. The tone is temperate in partisanship, although distinctly American in such questions as Belgium and submarine warfare. Exceptions might be taken to the statement that the Moroccan crises (pp. 701, 706) were triumphs for Germany.

The series of colored and sketch maps is excellent. Out of the twenty-seven, six are distinctly upon the world war. The map on the German penetration of Russia follows the earlier version of the treaty of Brest-Litovsk, rather than the later and more correct one, including Erivan among the provinces ceded by Russia (p. 748). These, however, were not ceded to Turkey, but to the people of the provinces themselves. Batum, too, was not in 1918 a part of Kutais but a separate administrative district. The racial map (p. 428) could not possibly do justice to all the complications, and it is possible to criticize the classification of the Greeks as Ural-Altaic.

The appendices contain lists of rulers of European nations since the French Revolution, of the Popes since 1775, of the prime ministers of Great Britain since 1783, and of the chancellors of the German Empire. The topical bibliography of thirty pages is partially annotated, giving indication of the works particularly recommended by the author. The index appears to be adequate, comparatively speaking, and serviceable.

ARTHUR I. ANDREWS.

Tufts College.

British-American Discords and Concords; A Record of Three Centuries. Compiled by The History Circle. (New York: G.P. Putnam's Sons. 1918. Pp. 70, 18.)

This is a summary of the relations between Great Britain and America, which has been compiled by the History Circle—an organization

founded in New York in May, 1917, for the purpose of studying and presenting "past national and international experiences for such light as they may throw on present events and policies." Relations between the two countries are divided into three epochs, 1607–1763, 1763–1815, and 1815 through 1898; and within each the leading events are briefly and concisely summarized. A seven-page conclusion points to the need of unity of the English-speaking peoples. At the close of the volume are two useful sections giving references to citations from authorities used in the earlier part of the book, and a partial bibliography.

There is so much ignorance and misunderstanding about the relations between America and what was once England, but is now Britain, that an authoritative and brief account is welcome. It is especially valuable when Americans are considering the character of various nations with which America may decide to associate herself for her future safety.

The book contains a facsimile letter of Thomas Jefferson to President Monroe, dated from Monticello, October 24, 1823, which is startling in its present aptness. The book also describes the position of George Washington in the development of the English-speaking civilization, and the esteem in which his memory is held in that greater England, now so well termed the Britannic Commonwealth.

The anonymous nature of the book is an innovation which will be watched with interest in America where such procedure is not common. The publishers' foreword states that if the public reception given to this volume justifies there will be further monographs similar in general purpose and character. It is sincerely to be hoped that the History Circle will give us more material of the same value and timeliness.

SINCLAIR KENNEDY.

Brookline, Mass.

The Petition of Right. By FRANCES HELEN RELF. (University of Minnesota Studies in the Social Sciences. Minneapolis. 1917. Pp. 74.)

Dr. Relf begins her study on the history of the Petition of Right with a discussion of the Five Knights' case and the essential matter involved which was imprisonment on the king's command. The author shows quite clearly that, while the other three grievances complained of in the petition were also important, the great issue, after all, was arbitrary imprisonment. The remedy in such a case was the writ of *habeas corpus*, but there was a well-founded fear that the judges could

not always be depended upon to issue this writ. Parliament had a choice among three courses of action: it might accept the king's promise to observe the law; it might proceed to legislate anew on the subject; or might content itself with declaring what the law really was. After a bitter conflict between those who wished to deal with the grievance by means of a statute and those who preferred not to antagonize the king too violently, the third course was finally adopted. Dr. Relf holds that the commons determined to proceed by petition rather than by bill because it was believed that a declaration of what the law was, if passed by both houses and approved by the king, would be accepted without question by the courts. The Petition of Right is consequently neither a law nor the equivalent of a law; it was adopted by Parliament acting not in its legislative but in its judicial capacity. The author has based her study in large measure on manuscript materials which have only recently become accessible to students of history. The argument has been worked out with great care and the results are stated with clarity and precision.

L. M. Larson.

University of Illinois.

The Development of the United States from Colonies to a World Power. By Max Farrand, Professor of History in Yale University. (Boston: Houghton Mifflin Company. 1918. Pp. x, 356.)

This small volume expresses the new vitalizing spirit and the new point of view which has been gradually finding its way into the study and interpretation of American history since the appearance of the earlier historical writings of McMaster and Roosevelt, and especially since the appearance of Professor F. J. Turner's *The Influence of the Frontier* in 1893. For the views which it expresses the author recognizes a peculiar obligation to Professor Turner.

The volume was written "in the hope of rendering a service to those whose interest in American history has been recently stimulated." Its purpose has been accomplished with simplicity, clearness, and accuracy. Through a brief presentation of significant and prominent facts, unobscured by traditional views or multiplicity of detail, it attempts to interpret and explain the large currents and movements of American development—especially emphasizing economic (industrial and commercial) and intellectual changes and influences. It describes the dynamics of history rather than the mere record of accomplished

fact. It treats with interesting reasons and consequences, the real meaning of evolutions, the larger threads and relations of cause and effect. Considerable attention is given to the influence of the West, and adaptability to changing conditions.

In sixteen chapters the author classifies by periods, and compresses into small compass, the chief historic movements and features of American history, particularly stressing changes and adjustments to meet new conditions. A brief but choice bibliography follows each chapter. For the student of politics, two of the most interesting later chapters are "Business and Politics" and "The Second Generation." In the latter chapter the author expresses appreciation of the work of Roosevelt as the "leader of the reformers," and also of the leadership of Wilson as a positive reformer in "an unequalled record of legislative achievement . . . . strengthening federal authority at the expense of local governments, contrary to Jeffersonian theories of democracy."

The book is practically free from errors—although one may question the strict accuracy of a few statements, such as: "the proclamation of 1763 was acquiesced in as a temporary measure" (p. 34); "every provision of the Federal Constitution can be accounted for in American experience between 1776 and 1787" (p. 74); "the National Road (through excessive grants from sales of public lands) was extended to the Mississippi river and beyond" (p. 99). An apparent slip appears on page 110 (line 20) in the use of "them."

Necessarily such a brief, general interpretative sketch must omit much which would have been included in a more comprehensive treatment. The volume should prove interesting to the general reader and also useful as a supplementary text in a general introductory course in American history.

J. M. CALLAHAN.

West Virginia University.

From Isolation to Leadership. A Review of American Foreign Policy. By JOHN HOLLADAY LATANÉ, Ph.D., LL.D., Professor of American History in the Johns Hopkins University. (New York: Doubleday, Page and Company. 1918. Pp. x, 215.)

Professor Latané has filled in the background of the Wilsonian democracy admirably. Incidentally, he has written what for the purposes of the general reader is the best review we have of our diplomatic history. Nor will the appeal of this little volume be limited to the general reader, for so excellent is the author's selection and grouping of material

that even the special student will own a sense of obligation. The scope of the book is best indicated by its chapter headings: Origin of the Policy of Isolation; Formulation of the Monroe Doctrine; The Monroe Doctrine and the European Balance of Power; International Cooperation without the Sanction of Force; The Open-Door Policy; Anglo-American Relations; Imperialistic Tendencies of the Monroe Doctrine; The New Pan-Americanism [the contents of the chapter show that the word "new" in this connection is rather misleading]; The End of Neutrality and Isolation; The War Aims of the United States. Chapters 3, 6 and 8 are especially good; chapters 9 and 10, somewhat less satisfactory.

Naturally, in a work of this brevity, some omissions will be regretted, and some statements will appear without the final touch of accurate qualification. But such cases are rare in these skilfully written pages, as are also more positive errors. A few criticisms, however, should be noted.

The statement made on page 121, with reference to the Panama tolls controversy, that "most American authorities on international law and diplomacy believed that Great Britain's interpretation of the treaty was correct," seems most questionable. Nor was the repeal voted by Congress of the Tolls Act accorded as "an act of simple justice." Congress did not admit that any injustice had been done, but asserted by an emphatic majority the right of the United States to enact the kind of measure repealed.

The British embargo is defended by the writer in the following passages: "In the present war Great Britain has merely carried the American doctrine [of continuous voyage] to its logical conclusions" (p. 125); "she enlarged the lists of absolute and conditional contraband and under the doctrine of continuous voyage seized articles on both lists bound for Germany through neutral countries" (p. 175); "as the Declaration of London was not ratified by the British Government this distinction [between absolute and conditional contraband, as to ultimate destination] was ignored" (p. 177). In the first place, the distinction between absolute and conditional contraband is in no wise dependent on the Declaration of London, which it antedates by several generations. Again, Great Britain did not pause with ignoring this distinction; she also ignored the more fundamental distinction between contraband and innocent goods; nor was it merely goods destined to Germany through neutral ports which she stopped, but also goods coming from Germany through such ports. The American doctrine

of continuous voyage, or better ultimate destination, so far as it was applied to the carriage of contraband, was defended at the time by the British solicitor-general himself, as in harmony with Lord Stowell's decisions (see *The Stephen Hart, Blatchford's Prize Cases*, p. 387); and in no case did it override settled rules of international law, as did the British embargo.

On page 179 the suggestion is ventured that the state department would probably have taken some action regarding the German embassy's *Lusitania* advertisement "had not the incident been overshadowed by . . . . the actual destruction of the *Lusitania*." In view of the department's studied silence through many months regarding much more reprehensible activities of the German embassy, this conjecture must be regarded with some skepticism.

On page 206 the author writes: "The right of a state to wage war is based on the doctrine of national sovereignty, a nineteenth century outgrowth of the old doctrine of the divine right of kings." The idea of the righteousness of war in certain circumstances would seem to be at least as old as the Old Testament. The justice of war as a redress of grievances is recognized by Grotius and before him by the Church writers. "Offensive warfare," says Vittoria, writing early in the sixteenth century, "has for object the punishment of an unjust act and to extort satisfaction from enemies; but this cannot be done unless there has been a previous fault and violation of a right" (*De Jure Belli*, p. 13). It may also be held that the doctrine of divine right is by no means the sole ingredient of the doctrine of national sovereignty.

But such challenges as these only add to a reviewer's pleasure in a book of this general excellence. A first-rate index rounds out the volume.

EDWARD S. CORWIN.

Princeton University.

A World Court in the Light of the United States Supreme Court. By THOMAS WILLING BALCH. (Philadelphia: Allen, Lane and Scott. 1918. Pp. 165.)

In this handsomely printed volume Mr. Balch has collected and discussed the more important cases in which the Supreme Court of the United States and its predecessors, the courts appointed by the Continental Congress, have exercised jurisdiction in controversies between states, with the view, he says, "of advancing an argument in

favor of the early creation of a Supreme Court of the Nations as the best and easiest means of insuring peace between the members of the family of Nations" (p. 156).

The study, however, reveals that even the Supreme Court has not always been successful, notably in its effort to settle the controversy between the North and the South by the Dred Scott decision. Other decisions, such as those in the cases of the *Active* and of the Wyoming settlers—both regarded by Pennsylvania as derogatory to her sovereignty—resulted in near approaches to war (pp. 21, 63, 65). Thus Mr. Balch was "forced to realize that there were limitations to the possibilities of securing world peace by the mere establishment of such a Tribunal" (p. 156). The crux of the matter, in the author's opinion, lies in the elaboration of formulae for distinguishing between legal and political questions. For decision of the latter, organs other than courts appear to be necessary. In the international field such institutions as a council of conciliation and an international legislative body have been suggested to supply the want.

Only one phase of the jurisdiction of the Supreme Court of the United States is considered. In addition to its jurisdiction in controversies between states, it exercises jurisdiction in cases arising under the Constitution, treaties or laws of the United States. It is to the latter jurisdiction that we owe the development of a workable constitutional law. Possibly international institutions, with a jurisdiction founded on the nature of the case, such as the international prize court proposed at the Second Hague Conference, and an international court of claims (*American Journal of International Law*, vol. XII, p. 89), might be expected by analogy to prove more valuable international organs than a court with jurisdiction defined exclusively by the nature of the parties.

QUINCY WRIGHT.

Harvard University.

A History of Suffrage in the United States. By KIRK H. PORTER. (Chicago: The University of Chicago Press. 1918. Pp. 260.)

This brief but comprehensive summary of the development of suffrage legislation and practice in the United States will serve a very useful purpose; for, although several careful studies have been made of suffrage in the individual colonies and of the general suffrage move-

ment in the colonial period, the development through the period since the adoption of the Constitution has not received the attention which it has deserved.

The author seeks to show that "a vigorous fight has been going on ever since 1776 to secure suffrage for some large and discontented group—ever growing larger and more discontented until it finally embraced the women. And in the wake of this demand the suffrage franchise has expanded slowly, grudgingly, and by compromising steps."

Three tables and a diagram are helpful features of the book. In so condensed a treatment of this complicated subject, larger use might well have been made of such devices, applying this method of comparative presentation to such topics as the spread of woman suffrage, the diversity of residence and citizenship qualifications, and the exaction of literacy tests.

The materials mainly used have naturally been the provisions of state constitutions and the debates in constitutional conventions, together with reports of court decisions. Greater attention to statute law, for example as to registration, would have made the narrative more faithful in its presentation of the actual exercise of the suffrage.

The arrangement is somewhat confused, for the topical chapter headings in several cases do not fit the chronological treatment that is used. Thus, in the chapter headed "Woman Suffrage Since the Civil War" a considerable section is devoted to a discussion of literacy tests.

Nearly a third of the book is devoted to the negro's relation to the suffrage—"how he got it, what he did with it, how he lost it, and what the result may lead to." It is a broad and candid study. The author seems, however, to give scant justice to the motive of such leaders as Sumner in seeking to confer the ballot upon the negro as a needed defense against prejudiced action on the part of his former masters, although (p. 199) he presents plain evidence that the menace was a real one. The discussion of the processes and the constitutional enactments by which the negro has been excluded from the suffrage is excellent.

The author acknowledges a suspicion that his treatment of woman suffrage "will not be considered entirely satisfactory or fair by those who favor the cause." Before its final triumph he anticipates "a struggle which will be interesting, and it may be exceedingly long."

GEORGE H. HAYNES.

Worcester Polytechnic Institute.

American Problems of Reconstruction. A National Symposium on the Economical and Financial Aspects. Edited by Elisha M. Friedman. (New York: E. P. Dutton and Company. 1918. Pp. xvi, 471.)

Although the subtitle of this collection shows that the treatment is confined to economic and financial aspects, a citation of a few divisions of the book will give a clearer idea of the field covered. They include such headings as: Principles of Reconstruction in Europe; Efficiency in Production; Scientific Management; Readjustment of the Industries of Steel and Chemicals; Capital, Labor and the State; The Railroad and the Shipping Problems; The Free Port as an Instrument of World Trade; Stabilizing Foreign Exchange; The War and Interest Rates; Fiscal Reconstruction.

To select wisely a list of topics would be futile unless the editor were successful in obtaining writers on these topics who are experts in their fields. When it is noted that among the twenty-seven contributors appear such names as Irving Fisher, E. W. Kemmerer, Alexander D. Noyes, Edwin R. A. Seligman, Frank A. Vanderlip, Frederick A. Cleveland and Lewis B. Wehle, one should expect a treatment that is able and scientific. A careful reading of the whole book will, in general, confirm this expectation. Some few of the papers are too general and too sketchy to be of much value, but they are not typical of the whole.

Among the difficulties of a study of reconstruction at the time these chapters were written was the fact that the war was still raging and no man knew exactly what the problems were, since the longer the war lasted the greater the displacement from normal conditions. Having set out with the hypothesis that the underlying idea of reconstruction is the attempt to determine what new conditions resulting from the war confront us and what suitable adaptation may be made to meet them, and since little or nothing in the way of reconstruction was possible while the war was in progress, the study largely takes the form of general principles or proceeds on particular assumptions. Thus most of the conclusions in this volume have more or less a tentative character.

There are some who will not care for the book because it has in it so little on reconstruction of the character found in socialist, labor and other publications dealing with the so-called social problem. Mr. Lewis B. Wehle's paper on "Capital, Labor and the State," covering only twenty pages, is the only one which deals with the new and prospective status of labor; but this, it should be said, is a very thoughtful and discriminating discussion.

This collection is one of the first in the field and there will doubtless be many to follow, but there is enough of solid substance in this one to attract the serious student. There is a good index.

J. W. CROOK.

Amherst College.

Guide to the Use of United States Government Publications. By EDITH E. CLARKE. (Boston: Boston Book Company. 1918.)

The author of this book writes from a wide experience with public documents, or, as she prefers to call them, government publications. She was for two years, 1896–1898, chief of cataloging in the office of the superintendent of documents, compiler of the *Monthly Catalogs*, of the *Document Catalog*, volumes 1 and 2, and of the *Document Index*, volume 1. She has also been a lecturer on the subject in the Library School of Syracuse University.

It was in a course of lectures that the book had its origin, but it is not in consequence merely a school text. "The work is not intended only as a manual for instruction in library training schools, nor for depository libraries only. It has the needs of depositories, chiefly of those which are public libraries, largely in view, of those which are college libraries somewhat. But the needs of the state libraries and the largest public libraries which maintain documents departments it regards not a whit. It will be seen that in different sections the work addresses itself to very different classes of readers:—now to the immature student of library science; now to the untrained librarian of the very small library; again to the chief of a depository public library; and at another time to anyone interested and influential in directing the policies of the government regarding the public printing." A perusal of the book leads one to wonder why exceptions are made in this statement, for certainly anyone who works with government publications, librarian or reader, might profit by it.

A few brief chapters tell the history of government printing up to 1895, with an account of the organization of the printing office, the distribution of publications, and the beginning of systematic bibliography. Considerably more space is properly given to the period beginning with the printing law of 1895, according to which the printing office is now conducted. In this connection the author takes up the recommendations of the Keep and the printing investigation commissions and urges their adoption. Only in this way can the present

unbusinesslike methods be abolished. A list of publications relating to the latter commission is included in the bibliographical appendices.

There is a widespread tendency among readers and even among librarians to look upon public documents as in a class by themselves, to be approached with trepidation and only in case of necessity. Miss Clarke contends that they are no more mysterious than any other printed matter, and require no different treatment in distribution, cataloging or use. Her chapters on legislative and executive publications explain the forms in which they appear, the system of numbering and the proper method of citation. It may be noted here that incorrect citation is the root of much of the trouble in securing documents in libraries. Acquaintance with this chapter would smooth the path of many a searcher in documentary material. The classified list of publishing bodies to be found in this section of the book should also be a valuable guide to the uninitiated.

The last section of the book, Library Practice, obviously concerns librarians only, giving suggestions for the acquisition, classification and cataloging of documents. This is supplemented by an interesting list of references to articles in library journals and proceedings, called Librarians on the National Publications.

A work of this kind, covering a considerable number of topics and addressed to many classes of readers, is almost necessarily disconnected, a feature which does not encourage continuous reading. But as a reference book and general guide to the subject it is alone in the field and plainly indispensable to anyone whose work is among government publications.

ROLLIN A. SAWYER, JR.

New York Public Library.

Departmental Cooperation in State Government. By A. R. ELLINGWOOD. (New York: The Macmillan Company. 1918. Pp. 300.)

It is necessary at the outset to point out that the title of this book does not accurately describe its contents. It deals with only one phase of departmental coöperation and is not confined to state government. A more accurate title would be "The History and Practice of the Advisory Opinion." The author traces the history of the advisory opinion, beginning with England in the twelfth century down through its development in the United States, Canada, and the Central and

South American states. In the chapter dealing with practice, consideration is given to the source of interrogations, the nature of the questions, the form of the replies, and the effect of the replies upon the interrogators. An exposition is made not only of the form and procedure of the advisory opinion, but also of its content, and an attempt is made to codify the law relating to such opinions. The body of the work is furnished with very elaborate footnotes, and an appendix contains the text of laws and constitutional provisions upon the subject, a table of cases, and a bibliography.

This book is all the more welcome because what has hitherto been written on the subject is extremely meager. The author has evidently made a careful and painstaking examination of practically all of the hundreds of cases in which advisory opinions are reported. He admits that the practice of the advisory opinion is open to some objections, but he points out that the special usefulness of such opinions in the United States rests upon two considerations: first, as avoiding to some extent the disadvantages arising from the enactment of unconstitutional statutes; and, second, as bringing about coöperation between the too greatly separated departments of government. In reference to the latter point, it may be said that the author appears to attach too great an importance to the influence of the advisory opinion in promoting the efficient coöperative action of the three departments of the state government, since most questions requiring coöperation are questions of policy and expediency rather than of law. On the whole, however, and within the scope of his subject matter, the author has produced a useful monograph.

J. M. MATHEWS.

University of Illinois.

The Veto Power of the Governor of Illinois. By NIELS H. DEBEL. (University of Illinois Studies in the Social Sciences, VI, Numbers 1–2. Urbana. 1917. Pp. 149.)

When a reviewer picks up a volume on the veto power of the governor of an American commonwealth and finds on the first page of the text the assertion that "the best theory of absolute monarchy" is that of Hobbes, he is tempted to stop right there, neglecting the rest of the volume, in order to expatiate on the divine right of kings, the philosophical theory of the state, and other irrelevant topics. But in this case, such a diversion would be an injustice to the reader, for the au-

thor's peculiar views on absolute monarchy have not interfered with his study of the use of the veto power by the governors of Illinois. Probably the use of the veto power in no state of the Union, except New York, would so well repay study, and Dr. Debel has done his task thoroughly and judiciously.

One should not complain because, in a study like this, there is little discussion of the many interesting suggestions to which such a study inevitably leads. Should we have the executive budget in our states, or the legislative budget, supplemented by the executive power to veto, and possibly also to reduce items of appropriation bills? Should there be an executive cabinet with greater authority in the framing and discussion of measures prior to enactment by the legislature? These and many other such inquiries cannot be answered adequately without ample knowledge, not only of the existing institutions of our country, but also of their actual operation. It is such studies as this that are giving us this knowledge.

It is a remarkable fact, as Dr. Debel observes, that although the power to disapprove items in appropriation bills had been granted the governor in 1884 only one instance of its use occurred before 1903. The reader wonders why, and also why the power was granted in 1884, if it was not to be used for nearly twenty years. Occasionally, as in this case, Dr. Debel does not satisfy our curiosity. In general, however, this monograph is all that can be desired. The facts are there, and the comment is illuminating.

A. N. HOLCOMBE.

Harvard University.

The Army and the Law. By GARRARD GLENN. (New York: Columbia University Press. 1918. Pp. 190.)

The Army and the Law is a clear and concise statement of the relation which the common law sustains to the army. The author, who is associate professor of law at Columbia, has produced an admirable piece of work, scholarly in its breadth, and careful in its technique. His purpose has been to uncover the legal principles inherent in the exercise of every function of the armed land forces of the United States. These principles, except for the Roman law forms in the courts-martial, belong to the common law, and his authorities are the precedents in English constitutional law and the decision of cases in our own courts.

The peculiar relation which the army sustains to society virtually

makes of it an estate of the realm. Its limitations in time of peace and its extension in time of war, therefore, lead the author to consider, successively, the soldier as a member of the army organization; his relation to the civilian and to civilian courts; his relation to the goods, territory, and person of the enemy; and the restrictions placed upon him in time of actual invasion and occupation of enemy territory. These necessarily involve a further, and very interesting, discussion of such matters as contraband, espionage, custody of enemy property, allegiance, confiscation, reparation, internment, and requisition.

The army is related to all of these, and, while they are also questions of international law, they are pertinent to the subject of common law. For, as the author points out, they have been frequently "the subject of inquiry by the courts, in order to determine the rights of litigants."

Curiously enough, to the layman at least, the application of the principles of common law to the army is frequently "pregnant with injustice" to the military commander. The facile phrase of Dicey's, however, that a soldier may "be liable to be shot by a court martial if he disobeys an order, and to be hanged by a judge and jury if he obeys it" is not strictly true. It indicates, nevertheless, a frequent dilemma.

In view of the present responsibilities of our armies abroad, the chapters on "Military Occupation in Matters of Government," and "Military Occupation in Matters of Property," are especially timely and interesting.

The Army and the Law is a book essentially for the student, and there is not a page in it which does not stimulate reflection.

CHALFANT ROBINSON.

Princeton University.

Crime Prevention. By ARTHUR WOODS. (Princeton, N. J.: Princeton University Press. 1918. Pp. 124.)

The Princeton University Press has published in a small octavo volume of one hundred and twenty-four pages the lecture on "Crime Prevention" which was delivered at that University during the past academic year by Lieutenant Colonel Arthur Woods, U. S. A., former police commissioner of New York City. In this lecture Colonel Woods has, in that inimitable democracy of manner coupled with aristocracy of intellect which is the foundation of his administrative genius, clearly formulated for the first time those broader conceptions and principles of modern police administration which Major Sylvester of Washington

has been practicing in a modest way for many years and which Chief Kohler of Cleveland first brought to the attention of the general public in this country.

Starting from the premise that routine police patrol and crime detection, though necessary, are comparable to swatting flies while leaving their breeding places untouched, Colonel Woods has outlined a comprehensive system of modern police administration, illustrating the abstract principles with concrete examples of what was done by the New York police department during his epochal administration under the late Mayor Mitchel. To prevent crime, in so far as any police department can hope to accomplish this result, the public must be educated to coöperate intelligently with the police officers, an effort must be made to diminish the supply of criminals, and society must protect itself more adequately against the large class of mental defectives who are congenitally irresponsible and against the drink and drug addicts who acquire irresponsibility by their own acts. Colonel Woods also outlines the underlying principles of present-day tendencies in the treatment of convicts and of juvenile delinquents with the sole object of protecting society instead of with the apparent object of punishing the offender.

That this volume will be read and studied carefully by police officers, municipal officials and students of civic problems throughout the country is certain. It is sincerely to be hoped, however, that just as the Spencer Trask Foundation rendered possible the delivery of this lecture at Princeton University, some other public-spirited citizen will make provision for its wide distribution among the citizens of our large municipalities.

LEONHARD FELIX FULD.

New York City.

The A B C of Exhibit Planning. By EVART G. ROUTZAHN and MARY SWAIN ROUTZAHN. (New York: Russell Sage Foundation. 1918. Pp. 234.)

A natural sequel to the literature which has appeared recently on the Survey is a book on exhibits and exhibitions. *The A B C of Exhibit Planning,* by Evart G. Routzahn and Mary S. Routzahn, is the first volume in the Survey and Exhibit Series published by the Russell Sage Foundation. The book is drawn from the actual practical experience of the authors, who have visited and studied many exhibitions in various stages of progress.

The volume deals with the preparation of exhibits and the planning of exhibitions—two entirely different things. Social science and industrial and civic welfare constitute the principal subject matter. The outline of the volume is comprehensive. It presents systematically the reasons for an exhibition, what to do with it, how to organize, advertise and follow it up, the cost, etc. The chapter on cost gives definite figures and illustrations for various classes of exhibitions ranging from $600 to $3,500, the paragraphs on the apportionment of expenditures being especially valuable.

The illustrations naturally are an important part of such a book and their selection an indication of the authors' ability in this field. They are numerous and varied and in the main well selected. Almost all of them are popular in character. War posters and exhibitions for war purposes, notwithstanding the merit of many of them, have not received much attention. The reproduction of a few posters or panels in color would have been of value.

So far as it goes, the bibliography is good. It does not include, however, one of the most authoritative volumes on the scientific side of exhibit material, namely, Frank J. Warne's *Book of Charts;* nor a sufficient reference to the books dealing with the use of statistics.

The A B C of Exhibit Planning will be of practical value to all planners of exhibitions, to social workers, and others interested in industrial and civic improvement.

JOHN NOLEN.

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American Cities: Their Business Methods. By ARTHUR BENSON GILBERT. (New York: The Macmillan Company. 1918. Pp. 240.)

The author, an ardent admirer and follower of Mr. Tom L. Johnson, the late mayor of Cleveland, has written this little book for the purpose of giving wider advertisement to the views of his leader. It is somewhat difficult to see just what readers he has in view. Technical terms are scattered through the volume too generously if the general reader is in mind; on the other hand, the specialist will not derive a great deal of information which is not already at his disposal.

The "book is sent forth with the hope that it may help to concentrate attention on the possibilities of constructive city evolution." The author looks on the city as a great assemblage of people who should

be taught to coöperate to the fullest possible extent in forming a productive society in competition with other similar societies. He discusses the elements of production such as cost of materials, labor, land, capital; he of course goes into the question of government ownership of all utilities that are subject to monopoly control; and he pays his compliments to the commission-manager type of city government.

He complains rather bitterly that citizens are so indifferent, but he believes that this indifference can be removed if they can be shown that their material welfare is involved in a more efficient city devoted to highly developed and highly socialized industry. He thinks that such a city would produce such quantities of valuable goods that all its members would be comfortable and happy. Among his arguments probably the most determined is for an approach to the "single tax," a lack of which he thinks is one of the greatest modern evils.

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MINOR NOTICES

The Year Book of the State of Indiana for the Year 1917 (1918, pp. 883) is an attempt to bring the most important facts about the government of the state indicated into such form as to be serviceable to the largest possible number of people. The bulky compilations and dreary wastes of statistics usually found in the reports of state departments have been boiled down and digested for use by busy people. Statistics have not been entirely eliminated, however, and the book not only serves the purpose of popularizing the reports of the state departments, but also supplies a useful reference work on the political, economic and social characteristics of the state government.

The Journal of the National Institute of Social Sciences (vol. I, no. 1) contains a collection of some thirty papers by various writers including Honorable Elihu Root, Dr. Charles W. Eliot, Professor Irving Fisher, former President Taft, Dr. Wilfred T. Grenfell, and others. The papers cover a wide field and include such subjects as Magna Charta (Root), One way of Escape from the Abyss of War (Eliot), Street Traffic Regulation (Eno), The Year's Work in Labrador (Grenfell), Modern Botany (M. T. Cook), Progress of the Pure Food Law (Alice Lakey), and others equally unrelated.

In *The Household of a Tudor Nobleman* (Urbana, Ill., 1917, pp. 277), Paul Van Brunt Jones has attempted to describe the organization and management of one of the characteristic institutions of Tudor England. The accounts begin with the household of Lord John Howard in 1462 and end with those of Lord William Howard in 1640. The book describes in detail the management of the household and explains how every item of expenditure was recorded and for what purpose. Apparently it required 120 servants in one household to wait upon a family of four. A bibliography of five pages is appended.

Professor I. J. Cox in his *West Florida Controversy, 1798–1813*, an expansion of his Albert Shaw Lectures on Diplomatic History, 1912, has made a most welcome contribution to the solution of an involved and disputed problem in the history of American westward expansion. The basis for Professor Cox's discussion is a long and searching examination of the archives, French, English, Spanish, and American, such as no previous historian has previously attempted. The result is a stout volume somewhat tiresome to read but containing information upon which everyone may base his own conclusions. The author's own conclusions are probably correct. West Florida was a part of the west which geographically must inevitably be occupied by the advancing pioneers, for whom "virgin soil, almost unoccupied, had . . . an irresistible attraction." In this case, as later in the case of Texas, they took possession. After the action of the pioneers the diplomats set up the claims of the nation. In their manner of doing this Professor Cox thinks that they "confused the issue and hampered those residents of the region who wished for American control;" but in the final outcome, in spite of blunders and of action that was not always praiseworthy, the occupation of the territory by Americans formed the determining factor.

Democracy versus Autocracy: A Comparative Study of Governments in the World War (New York: D. C. Heath and Co., pp. viii, 94) is intended primarily as a textbook for the war-aims courses. In it Professor Karl F. Geiser has made a study of political ideals, terms, and types of institutions by describing the parliamentary systems of England, France, and Italy, the autocracies of Austro-Hungary and Germany, Belgium as an example of the ideal small state, and Brazil as typical of the most progressive South American republics.

The Void of War by Reginald Farrer (Houghton Mifflin Co., pp. 306) contains seventeen letters from England, France and Italy describing the various battle fronts with some pen portraits of war scenes and incidents.

Paul Drake Harris has set forth in his book on *Democracy Made Safe* (Boston, Leroy Phillips, pp. 110) a series of strongly socialistic proposals. The "actual program" which Mr. Harris presents in the tenth chapter of the book deserves the attention of students of socialism.

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BEATRICE OWENS

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